DOCUMENT RESUME

ED 443 910 UD 033 692

TITLE	Educational Neglect: The Delivery of Educational Services to Children in New York City's Foster Care System.
INSTITUTION	Advocates for Children of New York, Inc., Long Island City.
PUB DATE	2000-07-00
NOTE	71p.
PUB TYPE	Reports - Research (143)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	Biological Parents; *Child Neglect; Delivery Systems; *Educationally Disadvantaged; Elementary Secondary Education; *Foster Children; Foster Family; *High Risk Students; Preschool Education; Student Mobility; Surveys; Urban Schools; Urban Youth
IDENTIFIERS	*New York (New York)

ABSTRACT

Children in foster care are the most educationally at risk population in New York City, and the longstanding failure of the responsible agencies to address the educational needs of foster children in New York City is a problem that has, for the most part, been ignored. This paper reports on a study aimed at creating a database to inform the delivery of educational services to children in foster care. Data collection involved the dissemination and collection of more than 280 surveys competed by foster and biological parents, educators, social workers, case workers, education professionals, lawyers, and foster children themselves. Most of the biological parents responding (89%) said that they were unaware of, and never informed about, the Early Intervention program while their children were in foster care, and half of foster parents did not know about this program. Only 18% of foster parents reported that children in their care were enrolled in preschool programs. Forty-two percent of the foster children stated that they did not start school immediately on entering foster care, and over 75% stated that they did not remain in their school once placed in foster care, with nearly 65% reporting that they transferred in the middle of the school year. Thirty percent of foster care youth reported receiving special education services, nearly three times the average for New York City. More than half of the young people who responded (52%) reported that they did not feel prepared to support themselves after they left foster care, and over 50% were not satisfied with the quality of the education received while in foster care. These findings and others demonstrate the lack of attention paid to the education of children in foster care. Recommendations are made to improve educational services for these children, while meeting federal, state, and local requirements. (SLD)

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EDUCATIONAL NEGLECT

The Delivery of Educational Services to Children in New York City's Foster Care System

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UD033692

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Education is the foundation upon which a child's future is built... [t]he lack of a good education severely limits one's life opportunities both in the sense of securing an adequate income and in the sense of full social participation and personal fulfillment... It is crucial to recognize... that these critical years of childhood cannot be replayed. The lack of a good education during a child's developmental years has a "terrible finality."[1]

Executive Summary

Children in foster care are the most educationally at risk population in New York City today. Unfortunately, instead of providing the coordination, case management and assistance to children in foster care, the main institutions in these children's lives, from their foster care agency to their local school, fail to put into place the fundamental building blocks that could help these at-risk children meet with educational success. Although these children are clearly entitled to educational services under law, their educational needs have continued to go unmet. The long-standing failure of the responsible agencies to address the educational needs of foster children in New York City is a problem that has, for the most part, been ignored. The lack of data to comprehensively document the systemic problems with the delivery of educational services to children in foster care has, until now, been a major barrier to all involved parties in creating positive educational change for these children.

In 1997, the Administration for Children's Services and the Board of Education together entered into a Memorandum of Understanding to share data, with the goal of creating a comprehensive database to inform the delivery of educational services to children in foster care. Such a database, as of this publication, has yet to be completed. Since no system-wide data tracking the educational performance of the City's foster children exists, Advocates for Children of New York (AFC) decided to gather data directly from all of the stakeholders involved in the delivery of educational services to foster care children as well as to the foster children and parents themselves.

Advocates for Children is a not-for-profit advocacy organization dedicated to ensuring equal and quality education in New York City. For nearly thirty years AFC has worked to secure high quality, appropriate public education for all of New York City's children. AFC has worked with biological and foster parents as well as children in foster care, advocating for educational reform in New York City.

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[1] Improving Educational Services for Foster Children: An Advocate's Guide, p.1 (May 1999). Prepared by Laurence M. Heybach and Wallace Winter, in cooperation with The Office of Educational Services of DCFS and the Office of Policy Initiatives of the Child Protection Division, and The Chicago Public Schools, for "Partners in Education," Third Annual Children Can't Wait Conference, Child Protection Division of the Circuit Court Cook County, Honorable Nancy Sidote Salyers, Presiding Judge.

Our data collection involved the dissemination and collection of over 280 surveys filled out by foster parents, biological parents, educators, social workers, case workers, educational professionals, lawyers and foster children themselves to determine the educational experience of NYC's foster care children. The surveys were targeted to obtain information concerning three primary areas: (1) appropriate enrollment of foster children in preschool and school programs; (2) continuity of educational services for foster children (or lack thereof); and (3) the quality of educational services.

AFC SURVEY FINDINGS

INITIAL ENROLLMENT IN EDUCATIONAL PROGRAMS

Early Intervention

- 89% of the biological parents who responded stated that they were unaware of, and never informed about, the Early Intervention program while their children were in foster care. This lack of information is critically serious, because without parental consent most children in foster care cannot receive these services.
- Of the foster parents who responded, half indicated that they were unfamiliar with the EI program.

Preschool Programs

- Though preschool is often the key to academic success of at-risk children only 18% of the foster parents reported that children under their care were enrolled in preschool programs.
- Of the foster parents who indicated that none of the foster children they cared for were enrolled in preschool programs, 80% reported that no one advised them to enroll these children in such programs.

Initial Enrollment for Compulsory School Age Foster Children

Children in foster care

- 42% stated that they did not start school immediately upon entering foster care.
- Nearly 50% who stated that they experienced a delay in school entry said that they were kept out of school because of lost or misplaced school records.

Law Guardians and Caseworkers

- 100% law guardians and over 80% of the caseworkers/social workers who responded to this question stated that their clients were not immediately enrolled in school upon entering foster care
- 79% of law guardians indicated that the delay was due to lost school records, 70% of Caseworkers indicated the same delay due to lost school records.

CONTINUITY OF EDUCATIONAL SERVICES

School Transfers

Foster Care Youth

- Over 75% stated that they did not remain in their school once placed in foster care.
- Nearly 65% of the young people said they had been transferred to another school in the middle of the year.
- 70% who answered yes indicated that they had been transferred at least once during the school year, 22% indicated twice in same year, and 10% had been transferred more than 5 times in one year.
- 57% stated that no one explained to them why they were transferred from the school.

Pregnant Foster Teens

- Over 20% of pregnant and/or parenting teens indicated that they had been forced to change schools when they became pregnant.

Law Guardians

- Nearly 70% of the law guardians indicated that their clients had been transferred to more than one school within the same academic year.
- Nearly 90% of law guardians attributed short-term foster home placements as the reason for the transfers.

Caseworkers/Social Workers

- Nearly 75% stated that their clients were transferred to more than one school within the same year.
- 45% indicated that their clients transferred schools more than twice in one year.
- 65% attributed delays to behavioral problems in foster home; 51% indicated behavioral problems in school as a cause.

QUALITY OF EDUCATIONAL SERVICES

Special Education

Foster Care Youth

- 30% of foster care youth reported receiving special education services, with 56% beginning receipt of services after entering foster care. This is nearly three times the average for New York City.

Biological Parents

- Less than 6% of parents who answered this question indicated that they participated in the special education identification and referral process of children who were evaluated for special education after entering foster care. 90% of parents indicated that they participated in none of the special education processes.

Caseworkers/ Social workers

- 60% replied that they were not aware of existing laws when referring children to special education.
- Over 50% indicated that their clients did not receive appropriate services very often while in special education.

Quality of education and satisfaction with education

Foster Care Youth

- 52% of young people who answered indicated that they did not feel prepared to support themselves after they left foster care.
- Over 50% of the young people were unsatisfied with the quality of their education received while in foster care.

EDUCATIONAL SUCCESS INDICATORS

Dropout Rates

Foster Care Pregnant and Parenting Teens

- 40% of young women who answered indicated that they did not stay in school during their pregnancy

Multiple Suspensions

Foster Care Youth

- 7% of young people stated that they had been suspended more than five times during one academic year, and 4% stated they had been suspended more than twice in one year.

Holdover Rates

Foster Care Youth

- Nearly 45% stated that they had been held over at least once in school.

- Of those who answered yes to being held over 92% indicated they were held over once. 8% indicated they were held over twice.

Enrichment Services/Educational Options

Foster Care Youth

- 32% stated they had not discussed college and/or job skill with an adult while in foster care.
- Only 36% had indicated that they had participated in any type of job training program.

RECOMMENDATIONS

MEET THE REQUIREMENTS OF FEDERAL, STATE AND LOCAL LAW

- State law clearly outlining the state's obligation to assure proper educational services to foster care youth should be passed.

- NYSED should take responsibility for enforcing federal and state law.

- The New York City Board of Education must take responsibility for providing baseline educational requirements for children in foster care.

- The administration for children's services should take responsibility for training their staff about relevant laws and enforcing accountability for following laws.

SECURE APPROPRIATE ENROLLMENT OF FOSTER CHILDREN IN EDUCATIONAL PROGRAMS

- The Administration for Children's Services (ACS) and the New York City Early Intervention Program must implement strategies for effective coordination and collaboration between caseworkers and EI service providers to ensure the timely enrollment of eligible toddlers in foster care into the EI program.

- ACS must create a policy directive stating that all four and five year olds in foster care are enrolled in school programs.

- The Board should enter into an agreement with ACS to give preference to children in foster care in enrolling them in pre-kindergarten classrooms.

- Existing laws prohibiting delays in school placement of foster children, due to missing academic and immunization records must be enforced. ACS caseworkers and BOE staff who fail to comply with these mandates must be held accountable.

- Remove the major barriers to timely school enrollment and receipt of services.

- ACS must draft a directive which instructs caseworkers to make diligent efforts to ensure that all foster kids through the age of 21 are enrolled in an educational program at all times.

Achieve Continuity of Educational Services for Foster Children

- Minimize the disruption of academic instruction by keeping children in their original schools upon entering foster care.

- Listen to older children about their educational needs and allow them to choose to stay in their present school or transfer to a school closer to their new foster home.

- Remove the major barriers to timely school enrollment and receipt of services. These barriers are missing school records, insufficient caseworker communication and lack of knowledge about education issues. This can be done with comprehensive caseworker training and developing a coordination and communication plan between foster care agencies and schools

Improve the Quality of Educational Services Delivered to Foster Children

- ACS must provide caseworkers and supervisors with knowledge of the law and of the procedures available to access educational support services for children and hold staff accountable for making diligent efforts to ensure that their clients meet with academic success.
    - *Minimize multiple suspensions*
    - *Provide enrichment educational services and alternative education options*
    - *Create comprehensive transition services for children in foster care with the transition from school to work*

- ACS and the Board must track the number of foster children identified, referred and placed in special education settings in order to determine appropriateness of services received.
    - *Tracking of special education services to foster children is vital*
    - *A review of a random sampling of disabled foster children's educational records should be undertaken immediately*
    - *ACS should implement a policy for its staff to understand the special education system and alternative services*
    - *Parental involvement in the Special Education process*
    - *The Board and ACS should develop a comprehensive policy for the appointment of surrogate parents.*
    - *The Board should develop screening procedures and services for children in foster care who are referred for special education.*

I. Introduction

The link between foster care placement and low academic performance has been clearly documented across this country. Foster children frequently experience academic failure as a result of developmental, cognitive, behavioral and emotional problems caused, in part, by abuse, neglect, parental drug use during pregnancy, family disruptions and transience. Unfortunately, once a child enters foster care, the main institutions in these children's lives, from their foster care agency to their local school, fail to put into place the fundamental building blocks that could help these at-risk children meet with educational success.

There are approximately 37,000 children in the New York City foster care system.[2] Although children are entitled to educational services under federal, New York State and local laws and regulations, the educational needs of foster children in New York City have continued to go unmet. The long-standing failure of the responsible agencies to address the educational needs of foster children in New York City is a problem that has, for the most part, been ignored by legislators, policy-makers, and educational and child welfare professionals. The lack of data to prove the systemic problems with the delivery of educational services to children in foster care has been a major barrier to focusing all involved parties upon bringing about positive educational change for these children.

This report was written for the purposes of bringing this issue into focus and to begin a dialogue in New York City, using data collected and generated by our agency, about the state of educational services for foster care children. To this end, this report

summarizes the research on foster care and educational achievement, describes the legal framework for the delivery of educational services to children in foster care in New York City, documents systemic barriers to achievement, and sets forth recommendations for change to better serve these academically at-risk children.

Advocates for Children is a not-for-profit advocacy organization dedicated to ensuring equal and quality education in New York City. Since 1971, AFC has worked to secure high quality, appropriate public education for all of New York City's children, by utilizing a combination of strategies including individual case representation, parent empowerment, public education, community organizing, impact litigation, research and public policy work. AFC has worked with biological and foster parents as well as children in foster care, throughout its thirty years of experience advocating for educational reform in New York City. [3]

In 1996, we began a collaborative project to train biological and foster parents and foster care workers about children's educational rights. At these workshops, AFC staff began to observe trends in the type of educational problems experienced by the children in the care of the adults we were training. Despite what appeared to be serious systemic issues, however, there did not appear to be a comprehensive study examining the delivery of educational services to children in the New York City child welfare system.

In 1998, AFC issued a short report discussing the educational barriers faced by children in foster care. This report was based only on the results of 80 surveys of

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[2] The Administration for Children's Services, Reform Plan Indicators Status Report 2, p. 98 (March 2000). The report states that as of June 30, 1999, there were 36,648 children in care in New York City.

[3] Relevant AFC publications and reports include: The Educational Needs of Children in Foster Care: The Need for System Reform (1998); Miles To Go: Barriers to Academic Achievement and Innovative Strategies for the Delivery of Educational Services to Homeless Children (1991); Learning in Limbo (1989).

biological parents and a few small focus groups of foster care professionals.[4] Based on the seriousness of the issues raised in that report, we realized the need to further obtain empirical data concerning the delivery of educational services to foster children in the City. Our goal was to determine whether that data was consistent with the findings in our initial report and our day-to-day advocacy experience. We also recognized the need to analyze the legal requirements concerning educational rights of foster children in New York City to determine whether existing law could be enforced to improve educational outcomes for children in care.

To this end, in 1999 AFC sought to obtain empirical data from the New York City Administration for Children's Services (ACS), the agency responsible for providing child welfare services in the City, and the New York City Board of Education (the "Board"). Upon making these requests, we were informed that neither agency keeps statistics on educational services for foster children. In 1997, ACS and the Board had entered into a Memorandum of Understanding with each other agreeing to share data, with the goal of creating a comprehensive database to inform all policy and management of the delivery of educational services to children in foster care attending the City's public schools. This data was supposed to be available a year ago. However, as of the date of this publication the database has yet to be completed.[5]

Since there was no system-wide data that tracked the educational performance of the City's foster children, AFC decided to gather data directly from all of the

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[4] The Educational Needs of Children in Foster Care, *supra*, note 3.

[5] The results of a preliminary analysis of certain measures of academic performance of 500 randomly selected foster children in the New York City public school system, conducted by the Vera Institute of Justice for the Administration for Children's Services, is recorded in the report, Examining the Educational Performance of Children in Foster Care (January 2000).

stakeholders involved in the delivery of educational services to foster care children as well as to the foster children and parents themselves. Among other things, this report contains our analysis of these data collection efforts.

Our data collection involved the dissemination and collection of over 280 surveys filled out by foster parents, biological parents, educators, social workers, case workers, educational professionals, lawyers and foster children themselves to determine the educational experience of NYC's foster care children. The surveys were targeted to obtain information concerning three primary areas: (1) appropriate enrollment of foster children in preschool and school programs; (2) continuity of educational services for foster children (or lack thereof); and (3) the quality of educational services.

This report begins with an overview of the status of the child welfare system and the delivery of educational services on a national scope, where we found the problems in New York City mirrored by national statistics. The next section outlines federal and state educational protections afforded to foster children and describes the state of New York City's child welfare system. In section three, we provide an analysis of the survey data. The final section contains recommendations for improving the delivery of educational services to foster children.

II. Educational Performance of Children in Foster Care

Researchers across the country have assessed the educational performance of children in foster care and have concluded that foster children as a group often demonstrate weaker cognitive abilities, behavioral and emotional problems, and higher rates of absenteeism and tardiness which contribute to poor academic performance and

retention.[6] Although most of the current literature focuses specifically on the academic performance of children entering foster care due to abuse and neglect, these characteristics are also prevalent in children who are placed in foster care by their parents pursuant to a voluntary placement[7] or PINS petitions.[8] Irrespective of the basis upon which each child initially enters the child welfare system, it is clear that too many foster children receive inadequate educational services to address their needs.

> **"I was always moved around with no explanation. For school I had to always learn everything so fast. I never knew when I was going to get moved again. But it would always [be] within a short period of time." Foster care youth, AFC Survey # 6.**

Foster care "is intended to provide a temporary safe-haven for children whose parents are unable to care for them."[9] It is a system designed to protect children, by affording them the stability and individual support services necessary to address the

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[6] *See* Kurtz, P., Gaudin Jr., J., and Howing, P., *Maltreatment and the School-Aged Child: School Performance Consequences*, Child Abuse & Neglect, Vol. 17, p. 581-589, (1993). This study discussed the academic performance of 139 abused and neglected school-aged and adolescent children. As indicated in the study, "...maltreated children faired poorly in school and must be considered at risk of school failure and dropping out. ...One explanation for why the abused children were more likely to be retained could be that children who have poor academic performance and manifest behavior problems are more likely to be 'punished' by being held back than the children who are quietly doing poorly." *See also* Runyan, D. M.D., and Gould, C. M.D., *Foster Care for Maltreatment: Impact on School* Performance, Pediatrics, Vol. 76, No.5, p. 841- 847, (November 1985); Eckenrode, J., Laird, M., and Doris, J., *School Performance and Disciplinary Problems Among Abused and Neglected Children*, Developmental Psychology, Vol. 29, No.1, p.53-62, (1993).

[7] When a parent signs a voluntary placement agreement for her/his child, s/he transfers care and custody rights over that child to the state or city child welfare agency. However, the voluntary placement agreement should specify a certain date when the child is to be returned to the parent. The written voluntary agreement must also provide the parents with visitation privileges. NYSSL §384a. See also SSL §§358a, 384b, 392.

[8] FCA §712(a). A PINS, a person in need of supervision, is a person less than sixteen years of age who is "incorrigible, ungovernable, or habitually disobedient and beyond the lawful control of a parent."

problems that caused their initial placement in foster care. Unfortunately, intent and reality have yet to meet. The emotional and behavioral problems commonly manifested by children who are removed from their homes are often exacerbated rather than eliminated when children are placed in foster care. Loss of contact with parents and siblings, prolonged temporary care, overlooked by social workers, unattended physical and mental health needs, and repeated moves to new foster homes, are only some of problems endured by children in foster care.[10] It is evident that without academic intervention the future of foster children is grim.

Most foster children experience multiple placements while living in foster care.[11] Historically, change of placement of the child has meant an almost automatic change of school for foster children across the country. [12] Transience of children within foster care is routine.[13] Multiple moves occur despite the well-documented adverse effects to

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[9] Michael Mushlin, *Unsafe Havens: The Case for Constitutional Protection of Foster Children from Abuse and Neglect*, 23 Harv. C. R.- C.L. Rev. 199, 204 (Winter 1988).

[10] Runyan, *supra*, note 6, at 841.

[11] Chaifetz, J., *Listening to Foster Children in Accordance with the Law: The Failure to Serve Children in State Care*, 25 N.Y.U. Rev. L. & Soc. Change 1, 12 (1999).

[12] Improving Educational Services for Foster Children: An Advocate's Guide, *supra*, note 1, at 3.

[13] The Green Book of the 105th Congress, 1998 (hereinafter " The Green Book"), reports:

> The VCIS collected data on the number of placements during the preceding 3 years experienced by children in care at the end of fiscal year 1990. More than half the children in care at the end of fiscal year 1990 had experienced more than one placement, according to data from 15 States (table11-28). A comparison of these data with data from previous years suggests a trend toward more multiple placements between fiscal years 1982 and 1990. Specifically, a total of 43.1 percent of children in care at the end of fiscal year 1982 had been in more than one placement, compared with 57.2 percent at the end of 1990.

Mushlin, *Unsafe Havens*, *supra*, note 9, at 208 (reporting that "Stays in four or more foster homes are common"); National Commission on Children, *Beyond Rhetoric: A New American Agenda for Children and Families*, pp. 287-288 (1991) (reporting that approximately 55% of foster children experience two or more placements, eight percent experience six or more placements, while an estimated 14% stay in the

educational success.[14] Many researchers agree that the instability caused by frequent school changes and disruptions have harmful long-term effects on foster children, ultimately resulting in academic failure.

> [L]ack of continuity of education for DCFS wards [Chicago's Child Welfare Agency] is singularly and conspicuously regarded as the greatest threat to the children's well being both in childhood and for their later lives. ... A "rule of thumb" among educators is that it takes a child four to six months to recover academically from the disruption of changing schools. The child who changes schools also changes curriculum, friendships, and support systems. These losses, for DCFS wards, unfortunately tend to occur when the child is also losing family relationships, caring foster parents, or even a familiar bedroom... [C]hildren are not property. They are developing human beings who have but one opportunity for childhood. ...Each disruption of schooling puts the child farther behind and makes him or her more likely to fail. (Emphasis supplied).[15]

Child welfare experts agree that the need to ensure a quality education for foster children is underscored by both the individual and social interests at stake. Research indicates that high rates of school mobility contribute to poor attendance,[16] a strong indicator of future school dropout.[17] It is also widespread knowledge that "[d]ropping out of school has

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foster care system five or more years). *See also* Karoline S. Homer, *Program Abuse In Foster Care: A Search For Solutions*, 1 Va. J. Soc. Pol'y & L. 177, 195 (citing same study statistics as *Unsafe Havens* at 179-180).

[14] Sandra Hofferth, Healthy Environments, Healthy Children: Children in Families, A Report on the 1997 Panel Study of Income Dynamics, p. 13 (November 1998).

[15] Improving Educational Services for Foster Children, *supra*, note 1, at 4 (quoting Joy Rogers, Expert Panel Report on Education submitted in B.H. v. McDonald, 88 C 5599 at 2-3 (N.D. Ill. 1991)).

[16] Hofferth, Healthy Environments, Healthy Children, *supra*, note 14, at 13.

[17] Weitzman M., M.D., Klerman L., D.P.H., Lamb G., M.D., Menary J. M.S., and Alpert J., M.D., *School Absence: A Problem for the Pediatrician*, Pediatrics Vol. 69, No. 6, pp. 739, 740, (June 1982).

been found to be associated with [social] maladjustment, unemployment, and imprisonment." [18]

> **"...system kids are going through their own hell at the moment and it's hard to even concentrate on lessons which at that point in your life may seem pointless. Getting homework done in a house full of other people's problems is no easy feat, either. ... You'd think school would be something for a group home kid to look forward to. After all, you do get let out of your prison for half the day. But it turns out the prison walls follow you to school, in the form of all the stereotypes (you know, group home kids are trouble, no good, they sleep around they're a waste of time, etc., etc.) School is just another place where everyone looks at you as a freak of nature and you don't get what your supposedly there for – an education." Hazel Tesoro, *School Can Be Hell For System Kids*, Foster Care Youth United, pp. 30-31 (May/June 1999).**

All indicators point to foster children being disproportionately represented in this group. Separated from their parents, removed from their homes, schools, siblings, communities without appropriate supervision and academic support, "[c]hildren who have grown up or left foster care fill the nation's jails, mental hospitals and welfare rolls." [19] One study that charted the exit outcomes of California foster care youth painted a bleak picture of young people unable to meet minimum levels of self-sufficiency and socially acceptable behaviors. Over twenty-three percent of their study sample had an unsuccessful exit from

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[18] *Id.*

[19] Marcia Robinson Lowry, *Derring-Do in the 1980's: Child Welfare Impact Litigation After the Warren Years*, 20 Fam. L.Q. 255, 257 (1986).

care, including running away, refusing services, incarceration, psychiatric or other hospital stay, abduction or death.[20] It has been contended by some that foster care systems feeds 40% of its children onto welfare rolls or into prison, and that former foster children are three times more likely to become homeless than the general population.[21] . A recent study in California found that youth known to the child welfare system are 67 times more likely to be arrested than youth from the general population.[22] Closer to home, a study published in 1998 "found that 15% of the juveniles they interviewed who were in juvenile detention in New York City were in the child welfare system. This was a rate eight times the expected based on census data." [23]

The U.S. Department of Health and Human Services, most recently reported that, as of March 31, 1998, there were approximately 520,000 children in foster care nationally. [24] Reports indicate that the length of time children stay in foster care is also increasing. According to a report issued by the U.S, Department of Health and Human Services, the average length of stay for children in foster care during 1998 nationwide was 33 months.[25] As of June 30, 1999, there were 36, 648 children in care in New York

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[20] Mark E. Courtney and Richard P. Barth, *Pathways of Older Adolescents Out of Foster Care: Implications for Independent Living Services,* Social Work, Vol. 41, No 1 (January 1996).

[21] Elaine Rivera, *Children at Risk: An Alarming Look at America's Foster Care System,* Chicago Tribune, August 31, 1997 at 4.

[22] Sacramento County Community Intervention Program, Findings From A Comprehensive Study By Partners In Child Welfare, Law Enforcement, Juvenile Justice and the Child Welfare League of America, p.1 (June 19, 1997). The author notes that a one-year follow-up of the original study indicated that 50% of the group had a subsequent arrest or probation, p. 14.

[23] M.L. Armstrong, Adolescent Pathways, Exploring the Intersections between Child Welfare and Juvenile Justice and Mental Health, p. 18 (May 1998).

[24] U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. *See* www.acf.dhhs.gov/programs/cb. Data reflects current estimates as of January 1999. The AFCARS data was submitted for the reporting period 10/1/97 through 3/31/98.

City.[26] The average time spent by children in the New York City foster care system is four years, over one year longer than the national average.[27] This is important in an educational context since it becomes imperative if children are in care for this long (and older school aged children tend to be in care longer) that educational support and continuity is if the child is to meet with academic success.[28]

Legal Framework for the Delivery of Educational Services for Children in Foster Care

The two federal laws specifically enacted to address the deficiencies in state and local foster care systems are the Adoption Assistance and Child Welfare Act of 1980 (AACWA)[29] and the Adoption and Safe Families Act of 1997(ASFA).[30] Although both

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[25] *Id.*

[26] The Administration for Children's Services, Reform Plan Indicators Status Report 2, *supra*, note 2, at 98.

[27] Mark Green, Public Advocate of the City of New York, Justice Denied – The Crisis in Legal Representation of Birth Parents in Child Welfare Proceedings, p. i, (May 2000). The report measured the inadequacies of the current system for providing legal counsel to indigent parents accused of abuse and neglect in New York City, which often lead to inappropriately lengthy and costly foster care stays for children. The report emphasizes the need to increase attorney fees, which are "completely disproportionate to the costs of maintaining a law practice in New York City. Not surprisingly, it has become impossible to retain a sufficient number of qualified attorneys or to recruit new ones." *See also* The City of New York, Office of the Comptroller, Bureau of Management Audit, Audit of the Administration for Children's Services Efforts to Move Children Out of Foster Care, (November 30, 1999).

[28] Over 40% of New York City children in foster care are ten years old or older. In 1997 there were 7542 young people between 10-13 (19.3%), 7201 young people between 14-17 (18.4%), and 2287 that were over 18 (5.6%), for a total of 43.6%. As of 12/31/97 80.9% of 10-13 year olds were in care over three years, 83.7% of 14-17 year olds were in care over three years, and 94.4% of those 18 and over were in care over three years. New York State Department of Social Services, 1996 Monitoring and Analysis Profiles with Selected Trend Data 1992-1996: Child Protective Services, Preventive Services, Foster Care, Adoption, NYC-Upstate-Statewide, at 14, 17.

[29] 42 U.S.C. §602 (1982 & Supp. II 1996). The passage of AACWA was intended to promote State use of preventive and other services, whenever possible, to keep children safely in their homes. In the instances where removal was necessary, Congress expected child protection officials to secure permanent homes for children, either through reunification services which allowed for the safe return to their homes in a reasonably short period of time, or by placement in adoptive homes. For further insight into the legislative history of the Act, see also Public L. No. 96-272, 94 Stat. 500 (1980).

[30] Pub. L. No. 105-89, 111 Stat. 2115 (1997). Through this new legislation, Congress sought to impose accountability and greater responsibility on federal and local officials overseeing the nation's foster care population, to reduce the time children spend in foster care. "The act shifts some of the focus on parental rights to making the health and safety of children in care the primary concern when it comes to choosing

statutes acknowledge the importance of quality education and contain general language that implicitly affords educational protections for children in foster care, neither act outlines the educational rights of children in foster care.[31]

For children with special needs, extensive legal requirements are set out in the Individuals with Disabilities Education Act (IDEA),[32] Section 504 of the Rehabilitation Act of 1973,[33] and the Americans with Disabilities Act.[34] The IDEA, which addresses the needs of all disabled students, includes a few provisions that are specifically targeted to the needs of the foster care population.[35]

Unfortunately, New York State law fails to address the educational needs of children in foster care. The statutory duties imposed on New York State child protective agencies pertaining to education are limited to keeping updated school records,[36]

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when to preserve or reunify families and when to terminate parental rights." Chaifetz, *Listening to Foster Children*, *supra*, note 11, at 5 note 18.

[31] The major provisions of AACWA are found in IV-E and IV-B. In order to receive federal financial assistance, states have to adopt three separate plans: (1) a child welfare plan to direct the provision of services, (2) a foster care plan to guide operation of the state's foster care system, and (3) a case plan for each child in foster care. 42 U.S.C. Secs. 622(a), 671(a)(16), 675 (5) a-c. In defining "case plan," Sec. 675 (1)(C), emphasizes the significance of continuity of educational services, by providing "to the extent available and accessible, the health and education records of the child, include[e] . . .assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement."

[32] 20 U.S.C. §1400, et seq.

[33] 29 U.S.C.§794.

[34] Title II of the ADA, 42 U.S.C. §12132.

[35] 20 U.S.C. 1415(b)(2); 34 CFR §300.515. This portion of the IDEA discusses the process of appointing a surrogate parent. Parental involvement is essential to the special education process. Once a child is referred to the Local Educational Agency (LEA) for services, the LEA must meet with the parent in order to get the parent's informed consent for an evaluation. A child cannot be evaluated without the parents' informed consent. In instances in which a natural parent is unavailable, or if after "reasonable efforts," the LEA cannot discover the parent's whereabouts, and no person stands in parental relation to the child, the LEA must select a surrogate parent in order to ensure that the rights of the student are protected. The statute authorizes foster parents to be appointed as a surrogate parents.

[36] 18 NYCRR §428.3(b)(4)(iii).

maintaining a liaison with any school in which a child in its care is enrolled, and making "certain that all children in care receive education appropriate to their needs and in accordance with the requirements of the Education Law."[37] State and local child welfare officials do not appear to be able to follow these vague statutory mandates in the absence of internal policies. To date, most state and local authorities, including ACS in New York City, have failed to implement such policies.

As discussed above, the systemic inadequacies experienced by children in foster care (loss of contact with parents and siblings, prolonged temporary care, unattended physical and mental health needs, repeated moves to new foster homes, frequent school changes) are pervasive throughout the country.[38] As of 1995, the child welfare systems of 22 states and the District of Columbia were ruled to be inadequate by the courts. All 23 are operating under some form of judicial supervision."[39]

As a result of alleged violations of law and professional standards concerning the placement and care of children in the City's child welfare system, a class action lawsuit, Marisol v. Giuliani was filed against the City and State of New York.[40] One of the many issues raised by the Marisol plaintiffs was the continued failure by ACS to meet the

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[37] 18 NYCRR §441.3.

[38] Rick Thoma, *Lifting the Veil, How Widespread a Problem? A Critical Look at the Foster Care System* http://www.rica.net/thoma/foster04.htm (last modified July 13, 1998). See also, Santa Clara County Grand Jury, Final Report, Investigation: The Department of Family And Children's Services (1992-93) (reporting that the Grand Jury did not find clear and convincing evidence that the Department's foster care system operated with the best interest of the children in mind).

[39] Jill Smolowe, *Making Tough Calls,* TIME, Dec. 11, 1995, at 41.

[40] Plaintiff's complaint for Declaratory and Injunctive Relief describes the system as follows: "New York City has perhaps the most dysfunctional child welfare system in the country, despite the fact that New York State spends more per capita than any other state on child welfare and most of this expense is incurred in New York City. Marisol v. Giuliani, 185 F.R.D.152, (1999, SDNY) (outlining the settlement agreement reached by the parties).

educational needs of children in its custody.[41] In 1996, perhaps in response to this litigation, ACS released its Reform Plan, *Protecting the Children of New York*, defining its proposed strategies to reconstruct New York City's child welfare system.[42] Although this report set forth numerous recommendations and plans for revamping ACS, it did not contain a specific plan or recommendations for improving delivery of educational services to children in care.

A settlement agreement between the Marisol parties was reached in 1999. Pursuant to this agreement, an Advisory Panel of four experts in child welfare, selected and approved by the parties, was established. The Panel was charged with examining the systemic problems of ACS, and produce reports monitoring the progress made within the agency in compliance with the settlement agreement.[43]

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[41] The Marisol plaintiffs provide some examples of the alleged inadequate educational services provided to foster children in New York City in their complaint: "[f]oster children's biological parents are not included in educational decision-making, ...[f]oster children are disproportionately placed in special education adding to the stigma inherent in being in foster care, and increasing the likelihood that these children will either drop out of school or become so demoralized that they fall behind grade level ... [w]hen foster children must change schools ... their educational records do not follow them, so educational continuity becomes impossible. ... And when children leave foster care and return to their neighborhood school or high school of choice, educational records from their time in foster care often do not follow them, so they receive no credit for schoolwork completed while in foster care. Foster children with learning disabilities do not receive the testing necessary to document their disability, and thus are precluded from receiving legally mandated accommodations for it." Complaint at ¶¶ 79-80.

[42] The Administration For Children's Services, NYC Administration for Children's Services Reform Plan, (March 2000). The Plan's principle components emphasize coordinating and restructuring the child welfare services of ACS, including protective services, preventive services, and foster care.

[43] The Advisory Panel was created to ensure ACS progress in areas such as achieving permanency for children, monitoring and improving the performance of the private agencies with which the city contracts, and improving performance at the supervisory level. To promote permanency for foster children, the Panel recommends continuity in educational services through the initial placement of children in their own communities or neighborhoods and encouragement of the practice of "[c]hildren... stay[ing] in their own school during placement." See Advisory Report on Family Permanency Issues in the New York City Child Welfare System, p. 6 (February 11, 1999). The Panel also recommends utilization of the "Family Case Conference" to develop individual plans that will assure that young people have support systems in place and acquire necessary life skills. p. 19.

Although the Marisol litigation covers issues relating to educational services, as only one issue in a broader case primarily involving the operations of the child welfare system, it has not been getting the attention it deserves. In addition, to the extent that the suit focuses only on ACS procedures and not on the Board of Education, it can only address a portion of the problem.

Thus, the educational needs of children in foster care in New York City remain unmet. It was the need to focus attention on the delivery of educational services to foster children in the City that was the impetus for this report.

III. Analysis of Educational Needs of Children in Foster Care

When AFC began to look for aggregate data on the educational performance and experience of New York City's foster children, we were stunned to find that no such data was maintained by the Board of Education, ACS or the Office of Children and Family Services (the state agency that has oversight responsibility for ACS). Apparently, both the Board and ACS had already identified the lack of data as a problem. In response, in 1997 the Board and ACS entered into a Memo of Understanding to share data for the purposes of creating a database and tracking system. As of this date, however, and despite repeated assurances to AFC that the data will be available soon, the system has yet to be completed.

It became apparent that without the database and tracking system, the only way to document the delivery of educational services to foster care children was for AFC to engage in its own data collection efforts. To this end, AFC created a series of survey

instruments and compiled independent data regarding the delivery of educational services to foster children attending New York City public schools.

We targeted data collection efforts to gather information about three key issues: (1) foster children's access to preschool and school programs, (2) the continuity of educational services for foster children, and (3) the quality of educational services for foster children.

Methodology

AFC conducted surveys from February through April 2000, targeting for data collection the people most involved in the foster care system, to determine the scope, depth and quality of educational services offered to children in foster care in the New York City public school system. Survey respondents included biological parents,[44] foster parents,[45] and young people in foster care.[46] Other participants in the surveys included professionals who most commonly provide services to foster children: caseworkers,[47] social workers, law guardians,[48] early intervention service providers,[49] and chairpersons from 20 different Committees on Special Education (CSEs).[50]

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[44] Natural Parent Survey respondents came from two agencies: C-PLAN, and the Child Welfare Organizing Project.

[45] Foster Parents were surveyed at Little Flowers Foster Care Agency.

[46] Foster children were surveyed at several locations in New York City. Some were interviewed at their law guardian's offices, either at Lawyers for Children or The Legal Aid Society Juvenile Rights Division. Some foster care youth respondents were staff for Foster Care Youth United. Other youth were interviewed on-site at their agencies, which included New York Foundling, Inwood House, Louise Wise, and the Center for Children and Families.

[47] Caseworkers came from various agencies, including Graham Windham, and St Christopher's, Inc.

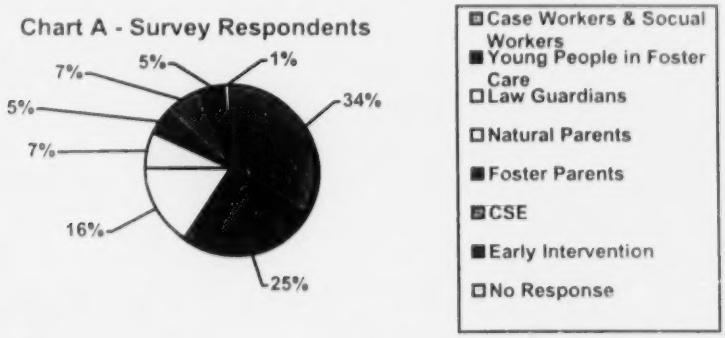
[48] Social workers and law guardians who participated in the surveys were on staff at The Legal Aid Society, Juvenile Rights Division and Lawyers for Children.

[49] The participating agencies that provide Early Intervention Services were TheraCare, St. Christopher – Ottilie, Thursday's Child, Fischer Children's Services, East Bronx NAACP Day Care Center, PEP Early Intervention, and Milestone School for Child Development.

The survey instruments were distributed primarily at workshops on educational rights conducted by AFC at various agencies throughout New York City. Other interviewees were initially contacted either by telephone or by letter, informed of the nature of the research, and asked if they would be willing to participate. The surveys contained questions about the experiences of those people and professionals involved in the foster care system. Copies of the surveys utilized are attached as Appendix A. It was not possible to independently verify the respondent's responses, which were for the most part collected anonymously. The surveys were tabulated and analyzed using the Microsoft Access database program.

Demographics

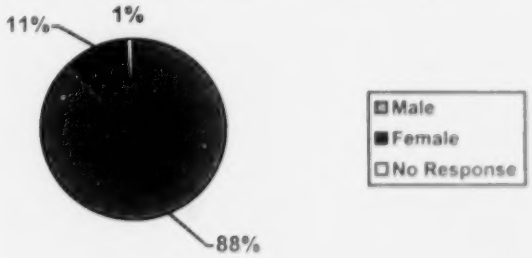
A total of 281 surveys were completed. As described below in Chart A, nearly 34% of survey respondents were caseworkers and social workers, 25% were young people in foster care, 16% were law guardians, 7% were natural parents of children in foster care, 5% were foster parents, 7% were CSE chairpersons, and 5% were Early Intervention service providers working with toddlers in foster care.



[50] The interviewer contacted 31 CSE district offices; twenty CSE chairpersons responded. Surveys were received from following borough district offices: Brooklyn – Districts 13, 14, 15, 16, 17, 19, 20, 22, 25; Bronx – Districts – 7, 8, 9, 10, and 11; Manhattan – Districts 1, 2, 3, 4, 5, and 6.

The young people who responded to the surveys were between the ages of 8 and 21, with over 75% being between 16 and 21.[51] As set forth in Chart B, below, 88% of the foster care youth were female, and 11% were male.[52] Chart C, below, describes the ethnic breakdown: over 50% of respondents were African American, 21% were Latino/a, 4.2% were white, 2.8% were Afro-Caribbean, 1.4% were Native American, and 1.4% were Asian American. Each participant indicated the type of foster care placement in which they were currently residing, as follows: 18.5% resided in group homes, 27% were living in a mother/child program, 2.8% in a maternity residence, 5.7% in a Residential Treatment Center, and 1.4% lived in an independent living apartment. Twenty-seven percent of the youth indicated that they lived in a foster boarding home with a non-relative family, while 14.3% lived with a relative. This is set forth in Chart D, below.

Chart B - Gender of Foster Care Youth Surveyed



[51] Seventy young people responded to this question, with the following age breakdown: 4.2% were eight, 2.8% were ten, 1.4% were twelve, 4.2% were thirteen, 4.2% were fourteen, 8.5% were fifteen, 18.5% were sixteen, 12.8% were seventeen, 24.2% were eighteen, 12.8% were nineteen, 2.8% were twenty, and 5.7% were twenty-one.

Chart C - Ethnic Background of Surveyed Foster Care Youth

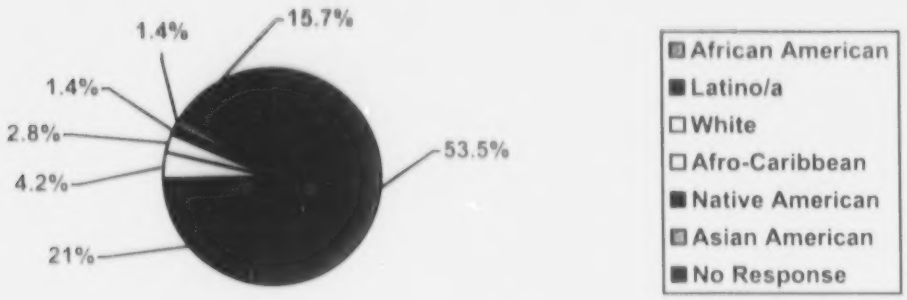
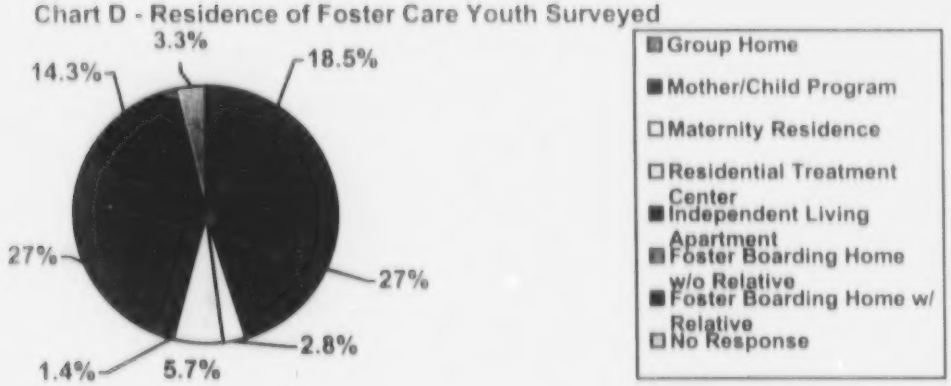


Chart D - Residence of Foster Care Youth Surveyed



Summary of Survey Responses

The following sections of this report analyze survey responses relevant to three areas: (1) the enrollment of foster children in educational programs, (2) an assessment of the continuity of educational services and (3) access to and quality of educational services received.

[32] The gender breakdown is lopsided because of the number of young women who we spoke to who were

(1) Initial Enrollment in Educational Programs

Initial Enrollment into the Early Intervention Program

THE PROBLEM: Based on anecdotal information, experience in the field and conversations with other advocates, we believed that children in foster care rarely received Early Intervention (EI) services, despite the fact that they are at great risk of developmental delays due to abuse or neglect.

Overview of the Early Intervention Program

EI services are those services to which infants and toddlers (birth to 3 years of age), who exhibit developmental delays or that have a diagnosed condition with a high probability of delay or disability are entitled. [53] EI programs are designed help children through the provision of a variety of services delivered by a team of professionals in the child's "most natural setting," which is often, but not always, the child's home. The program is designed to reduce the number of children with disabilities and/or reduce the severity of a child's disabling condition, depending upon timely identification and the provision of appropriate services to meet a child's individual needs. Services which are available through the EI program include, but are not limited to, audiology, speech/language therapy, physical therapy, occupational therapy, nutrition, health,

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pregnant or parenting and in foster care.

[53] The Early Intervention Program for Infants and Toddlers with Disabilities and Their Families is established by Part H (renamed part C effective July 1, 1998) of the federal Individuals with Disabilities Education Act (IDEA), and was implemented on July 1, 1993. These federal provisions are implemented in Title II-A of Article 25 of the New York State Public Health Law. The Public Health Law designates the Department of Health as lead agency responsible for implementing a comprehensive, coordinated system of therapeutic and supportive services to children from birth to age three who have significant developmental delays. *See* Early Intervention Annual Report On the Status of the Early Intervention Program, for July 1, 1997 – July 30, 1998 Program Year, released by the New York State Early Intervention Program, Early Intervention Coordinating Council.

nursing services, counseling, and training for family members of children with developmental delays.

The key to the success of EI is the identification and referral of children at the youngest possible age. EI intervention or lack thereof can determine the educational course for a child for the rest of his or her life. Federal law therefore includes a comprehensive "child find" requirement to ensure that parents and social service agencies are aware of, and refer, children for EI services. This requirement includes coordination with other agencies working with children so that referrals are made no more than two days after identification of possible eligibility. It also requires an effective method to determine which children are receiving access to needed EI services. In New York State, the Public Health Law provides that certain categories of professionals, including foster care caseworkers, are mandated referral sources for EI.[54] These professionals are mandated to refer any child that she or he suspects may be developmentally delayed, unless the natural parent raises an affirmative objection to the referral.[55]

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[54] *See* New York State Public Health Law §2542 and the program regulations set forth in 10 NYCRR §69-4.4, which state that primary referral sources must refer a child to the EI program "within two working days" of identifying the child under age three as having a suspected or confirmed developmental delay or disability or as being at risk of having a disability, unless the parent opposes such a referral.

[55] Parents are meant to be essential components of the EI referral process. If after diligent efforts parental consent cannot be obtained, either because a parent is unavailable or his or her whereabouts are unknown, and no person stands in parental relation to the subject child, the EI service coordinator must notify the EI Regional Director for the assignment of a surrogate parent. Surrogate parents are afforded the same protections and responsibilities as natural parents in representing a child in all matters relating to the identification, evaluation, and in developing an individualized EI service plan which meets the needs of the child. In cases in which a foster child's parent cannot be located, the agency caseworker must work closely with the EIOD to assign an appropriate surrogate parent. Foster parents are most commonly appointed as surrogate parents for the children in their care. See New York City Early Intervention Program Forms and Procedures Manual, New York City Department of Mental Health, Mental Retardation & Alcoholism Services, Neal L. Cohen, M.D., Commissioner, pp. 187-197 (November 1996).

In 1998, there were approximately 186,418 children receiving EI services nationwide.[56] In New York State more than 20,000 infants and toddlers received EI services that year.[57] Of those children, approximately 16,800 were served in New York City.[58] Of the 12,126 referrals made to the EI program in New York City during 1998, foster care workers referred only 4%.[59] We do not know how many of these children that were referred by foster care workers were actually in foster care, though we assume that the majority were.[60] Unfortunately, since there is no mechanism for tracking the delivery of EI services to foster children, we cannot determine how many of foster children were actually served by the New York City EI Program in 1998.[61]

The apparently low rate of referral from foster care workers, compared to other mandated professionals, appears to be a serious problem. As a result of abuse and neglect, it is likely that a much larger percentage of foster care children than that of the general population would benefit from EI services. Perhaps more troubling is the fact that the lack of data collection and tracking has made compliance virtually impossible to

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[56] *See* www.ideadata.org, which presents the most recent State-reported data available from the U.S. Department of Education, Office of Special Education Programs, Data Analysis System (DANS), as required under Section 618 of the IDEA. The data presented herein is based on the December 1, 1998 count.

[57] *Id.*

[58] *Id.*

[59] Early Intervention Annual Report, *supra*, note 53, at 4.

[60] Foster care caseworkers can make a referral whether the child is in care or whether the family is receiving preventive services.

[61] The Early Intervention Program currently maintains data, as required by the State Department of Health (SDOH) in a data system called Kids Integrated Data System ("KIDS"). However, there is no statutory requirement that the EIP track the delivery of services to foster children specifically.

assess, leaving a lack of accountability for ensuring delivery of critically important, life-saving services to the most at-risk population.

Survey Results –Enrollment into the Early Intervention Program

The survey data confirms that foster children do not appear to be getting EI services at the rate at which they should be in light of the higher rate of developmental delays and risk of delays in this population.

Of the eight subgroups surveyed, five were questioned about their familiarity with the EI program. These were biological parents, foster parents, law guardians, caseworkers/social workers and EI service providers.[62] Eighty-nine percent of the biological parents who responded to questions about EI indicated that they were unaware of, and never informed about, the EI program while their children were in foster care.[63]. This is critical because most biological parents must give their consent for EI services to commence. Of the foster parents who responded, half indicated that they were unfamiliar with the EI program.[64] Thirty-eight percent of the foster parents surveyed indicated that less than 25% of the children they cared for who were eligible for EI services did, in fact, receive these services while in foster care. This indicates that some foster children may not gain access to the EI program due to a general lack of awareness.

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[62] Because the foster care youth surveyed were between the ages of 8 and 21, they were not eligible for EI services and therefore not questioned about them. CSE officials were interviewed briefly over the telephone and were also not questioned about EI services.

[63] Of the biological parents surveyed, only 11% said they had an eligible child between the age of 0-3 with a developmental delay or disability, which is interesting because in a later question, the majority of the biological parents indicated that they had a child in foster care with a developmental delay.

[64] Thirty percent of those foster parents who responded reported that they had children between the ages of 0-3 in their care who had developmental delays. The fact that only half of the foster parents surveyed had been informed about the EI program is disconcerting, because once certified, foster parents are responsible for the safety and well being of children of all ages.

Most law guardians surveyed indicated that at least half of their clients between the ages of 0 and 3 had a suspected or confirmed developmental delay or disability.[65] Over half of the law guardians who were surveyed about EI services responded that between 50-75 % of their eligible clients in foster care received EI services.[66] The majority of the caseworkers and social workers who were surveyed stated that 25% to 50% of their clients between the ages of 0 and 3 had a suspected or confirmed developmental delay.[67] Caseworkers and social workers were divided about the delivery of EI services, with a little over 25% saying a quarter of their clients eligible for EI services received them, and a bit less than 25% saying seventy-five percent of their clients eligible for EI services received such services.[68]

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[65] Forty-four law guardians who responded to this question answered in the following manner: 52% indicated that approximately half of their clients had a suspected or confirmed developmental delay; nearly 23% indicated that approximately 75% or more of their clients were in this category, 18% informed that approximately 25% of their clients had some form of suspected or confirmed delay; 4% indicated that they did not know the answer to this question; and 3% indicated "other" as their response.

[66] All law guardians who were surveyed responded to this question, providing the following answers: nearly 36% of the law guardians indicated that 75% or more of their clients received EI services while in foster care; 20% responded that 50% of their clients received such services; 13% stated that approximately 25% of their clients were served in foster care; 26% did not know the answer to this question; and 5% indicated "other" as their response.

[67] The breakdown for the responses to this question by caseworkers and social workers is as follows: nearly 31% of those who responded stated that 25% of their clients had such suspected or confirmed delays; 22% indicated that approximately 50% of their clients were within this category; nearly 12% classified 75% of their clients as such. Nearly 14% of the social workers and caseworkers surveyed indicated that they did not know the answer to this question; this could be a result of the respondents' uncertainty about the number of children with suspected or confirmed delays or may indicate that the respondents are unfamiliar with the EI program. Similarly, nearly 14% of these surveyed respondents indicated that none of their clients had any such delays. The remaining 7% of caseworkers and social workers surveyed stated that this question was not applicable to them, in that they only worked with a particular age group that did not consist of infants and toddlers between the ages of 0-3.

[68] Ninety-three caseworkers and social workers responded to this question. The answers were as follows: nearly 26% of the respondents indicated that 25% of those clients eligible to receive EI services did receive them while in foster care. Nearly the same number, 24.7%, indicated that they didn't know the answer to this question but did not specify whether or not they knew about the EI program. Twenty-four percent stated that 75% or more of their eligible clients received EI services while in care; nearly 12% indicated that approximately 50% of their clients were served by the EI program while in placement. Four percent indicated that the question did not apply to them; 2% indicated that none of their clients were referred; and 7.3% provided no relevant information.

Early Intervention service providers all responded affirmatively when asked whether or not they knew if a child was in foster care upon initial referral.[69] In response to the inquiry of how many of the foster children who were referred to the EI program actually received services, over 70% of the service providers indicated that 75% or more of the foster children referred to the program are found eligible and provided services.[70] The average for all children referred for EI services in New York City, who are found eligible is 86%, indicating a similar eligibility rate for foster care and non-foster care children. [71]

EI Service Providers identified a number of primary referral sources of those foster children referred to their program. These included ACS caseworkers, foster care contract agency workers, health care providers, foster parents, biological parents and preventive service caseworkers.[72] The largest group identified as a primary referral source by EI providers was the privately contracted foster care agency caseworkers. This

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[69] After an initial referral to the EI program, every referral source must indicate on the EIP/I-CHAP Combined Initial Referral Form, whether or not the referred child is in foster care. *See* Early Intervention Program Forms and Procedures Manual, *supra*, note 55 at 23.

[70] Seventy-one percent of the EI providers indicated that 75% or more of the foster children referred to the EI program received services; 14% stated that approximately 50% of the foster kids referred were served; the remaining 15% indicated that they did not know the answer.

[71] Of the 22,117 children that were referred and evaluated by the EI program, between July 1, 1997 and June 30, 1998, 18,075 (86%), were found eligible for EI services. *See* Early Intervention Program Forms and Procedures Manual, *supra*, note 55, at 4.

[72] Over three quarters of the EI respondents specified that private foster care agency caseworkers referred between 10% and 95% of foster children to the EI program. Half of those surveyed in this group indicated that ACS caseworkers were also a primary referral source for their foster children client population. Sixty-four percent of EI providers identified foster parents as referral sources. Thirty-six percent of this respondent group reported that biological parents were another primary referral source for foster children. Fifty-seven percent of the EI services providers indicated that between 5% and 25% of their foster care cases were referred by foster care agency health care providers, while 28% of the respondents stated that other health care providers referred between 10% and 25% foster care clients to the EI program.

is heartening as it indicates that caseworkers know about EI and know how to make referrals.

Law guardians, caseworkers and social workers were also questioned about the EI referral process, naming similar sources as those identified by EI staff.[73] A majority of the law guardians also listed ACS caseworkers and private contract agency caseworkers as primary referral sources for clients deemed to be in need of services.[74] Furthermore, over ninety-five percent of the law guardians indicated that either they, or another staff member in their office, such as a social worker, assisted in referring eligible clients to the EI program. Consistent with EI staff and law guardian responses, caseworkers and social workers also identified their group as the largest primary EI referral source of foster children.[75]

Initial Enrollment in Pre-School Education

THE PROBLEM: While children in foster care are seriously at-risk of educational failure, our experience in the field and conversations with other advocates found that they are

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[73] Due to a statistical oversight, only those law guardians and social workers surveyed at The Legal Aid Society were given the option to distinguish between referrals made by ACS caseworkers and those made by private foster care agency caseworkers. However, 84% of the law guardians still listed agency foster care workers as a primary referral source of foster children to the program, while 62% indicated that ACS caseworkers had referred many of their clients to the EI program. Asked how many of the foster care cases were referred to the EI program by family members, 51% of the law guardians listed foster parents as a primary referral source. Only 6% of the law guardians surveyed reported that biological parents referred their clients to the EI program.

[74] Other primary EI referral sources identified by law guardians included health care and preventive service workers. Twenty percent of the law guardians surveyed identified health care workers as a referral source, and 8% reported preventive service workers as such.

[75] Sixty percent of the group reported that contract foster care agency caseworkers identified and referred between 25% and 75% of the foster children to the EI program, while 44% identified ACS caseworkers as a primary referral source. Twenty-six percent of the caseworkers/social workers surveyed stated that foster parents referred between 25% and 75% of the foster children to the program, whereas only 5% of the caseworkers/social workers indicated that biological parents made such referrals.

often excluded from NYC's public day care system, preschool programs and kindergarten classes.

Overview of General Public Preschool Programs

Under New York State law, school attendance is compulsory for children between the ages of six and sixteen.[76] In New York City, the compulsory age is seventeen.[77] New York State Education Law and New York City School Chancellor's Regulations also extend the right to public school education to children who are five and four, respectively.[78] Four-year-old children are entitled to be enrolled in pre-kindergarten, and five-year-old children are entitled to be enrolled in kindergarten. However, the decision to exercise this right is left to the discretion of the child's parent or guardian. This differs from the circumstances surrounding a child's enrollment in first grade, when education is becomes compulsory.

Decades of research document that children who participate in childcare, nursery school, Head Start and public school pre-kindergarten programs achieve greater academic success than those who do not participate. Benefits gained from participation include "higher scores on standardized reading and math tests, fewer grades repeated, less need for placement in costly special education programs, and increased high school graduate

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[76] N.Y. Ed. Law §3205 (McKinney 1995). This section provides in pertinent part that "[i]n each school district of the state, each minor from six to sixteen years of age shall attend upon full time instruction," thereby leaving school attendance of children under the age of five to the discretion of parents or guardians.

[77] New York City Schools Chancellor's Regulation (CR) A-210 (1) (1.1)

[78] N.Y. Educ. Law §3202 (McKinney 1995), provides that "a person over five and under twenty-one years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such person resides without the payment of tuition." *See also* CR A-101. CR-A-101 (I) and (II) provide in pertinent part, respectively, that "[c]hildren whose fourth birthday falls within the calendar year of admission shall be admitted to pre-kindergarten" and that "[c]hildren whose fifth birthday falls within the calendar year of admission shall be admitted to kindergarten whether these children are entering school for the first time or being transferred from another school."

rates."[79] Acknowledging these facts, in 1997 New York State enacted legislation creating Universal Pre-Kindergarten for all four-year old children.[80]

Survey Results: Enrollment in Pre-School Education

In order to determine whether foster children are benefiting from these initiatives, our survey included questions regarding enrollment of foster children in preschool education. Our survey results generally confirmed what we believed to be true about the failure to enroll foster children in these programs.

These questions were applicable to four of the eight groups which participated; biological parents, foster parents, law guardians, and caseworkers/social workers. Biological and foster parents were surveyed about how many of their children "under the age of six" were enrolled in the above-mentioned preschool settings. Sixty-two percent of the biological parents who responded to this question stated that their children of preschool age were enrolled in educational programs while in foster care, while only eighteen percent of the foster parents reported this to be true of the pre-school aged children in their care. Of the foster parents who indicated that none of the foster children they cared for were enrolled in preschool programs, 80% reported that no one advised them to enroll the children in such programs.[81]

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[79] Universal PreKindergarten Resource Partnership, Universal PreKindergarten Takes Off in New York State, Preliminary Findings from School Districts Implementing Universal PreKindergarten in One Year of Eligibility, 1998-9, p.3 (2000).

[80] Chapter 436 of the Laws of 1997. The law calls for access to services for all children, regardless of income, and including those with special needs (whether language barriers or disabilities). The goal is to provide universal access to all four-year-olds by school year 2002-2003, integrating all early childhood resources in any given community.

[81] Although the foster care agency staff, or ACS direct service staff, is supposed to enroll children in preschool, it appears to be a common practice for foster parents to do it. Whoever enrolls the child, it is clearly essential that the daily caregivers know about pre-kindergarten programs and know that their children should be enrolled in one.

Law guardians and caseworkers/social workers were also questioned about pre-school enrollment of the foster children they served. Most law guardians estimated that at least half of their clients were enrolled in pre-school programs.[82] The caseworkers/social workers who responded to this question varied in their answers, with the largest group, 30% of respondents, reporting that approximately 25% of the children they served were enrolled in a pre-school program.[83] Although the response to this question varied across the responding subgroups, these findings indicate that there are still a substantial number of foster children who are being deprived of a strong start in their education.

Initial School Enrollment of Foster Children of Compulsory School Age

THE PROBLEM: As discussed above, all children between the ages of six and seventeen in New York City must attend school full-time. Based on anecdotal information, experience in the field and conversations with other advocates it was our belief that children in foster care were rarely provided timely access to school programs.

Survey Results: Initial School Enrollment of Foster Children of Compulsory School Age

Our survey results confirmed that foster children are rarely provided timely access to school programs. Nearly 42% of the foster children surveyed indicated that they had experienced delays in school enrollment while in foster care. When asked specifically about the reasons for the delay, nearly half of those children attributed the delay to lost or misplaced school and immunization records. The most striking finding was that over half

[82] We assume that the following results apply only to that portion of their caseload actually age-eligible for preschool programs. Law guardian responses were as follows: nearly 43% indicated that half their clients were enrolled in pre-school; 25% stated that approximately 25% of their clients were within this category; nearly 23% reported approximately 75% of the children they represented were attending pre-school; and roughly 9% did not respond.

[83] Nearly 24% reported 50% preschool enrollment; close to 16% indicated 75% or more.

of the foster children indicated that these delays resulted in their being kept out of school between two to four weeks upon entering foster care. These findings were supported in the responses from law guardians and caseworkers/social workers.

All of the law guardians and over 80% of the caseworkers/social workers who responded to this question stated that their clients were not immediately enrolled in school upon entering foster care.[84] Consistent with the answers provided by foster children and law guardians, the caseworker and social worker subgroup also identified lost or misplaced school and immunization records, and insufficient caseworker assistance as primary reasons for the untimely school enrollment of foster children.[85]

Delays due to lost or misplaced records are particularly disturbing because students should never be excluded from school for this reason. Instead, Chancellor's Regulation A-710(4) require schools to admit such students for a short period of time while the new school sends fort the child's immunization records.

Conversely, when asked about the delays in school enrollment experienced by their children while in foster care, only 28% of the responding biological parents indicated such problems. Foster parents were even less likely to report enrollment delays for the children in their care, with only 11% acknowledging any such delays. It is

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[84] Nearly 44% of the law guardians who responded to this question reported that 75% or more of their clients experienced delays in school enrollment, and 34% reported that half their clients did. Nearly 35% of the caseworkers and social workers reported that approximately 25% of their clients were within this category; 33% of this group stated that this was true of 75% of their clients; and 18% indicated approximately 50% of their clients did.

[85] Seventy-nine percent of the law guardians who answered this question indicated that delays were due to lost school records; 79% attributed the delay to lack of caseworker availability to assist in the process; and 46% identified lost or misplaced immunization records as a cause. Similarly, nearly 70% of the caseworkers and social workers indicated that the delays were caused by lost school records, while 64% attributed these delays to lost immunization records. Remarkably, close to 38% of this responding group acknowledged that the deficiency of caseworker assistance was a contributing factor to foster children experiencing delays in school placement while in foster care.

possible that the children being taken care of by the foster parents surveyed may have been less likely to experience school disruption upon entry into the foster care system due to the fact that many of the foster parents surveyed were providing kinship foster care. Foster children in kinship care homes are generally more likely to maintain attendance in their current neighborhood schools than children who go to live with non-kinship foster parents, go into group homes and/or Residential Treatment Centers.

There was a clear divergence in the responses provided by foster children, law guardians and caseworker/social workers and those given by foster and biological parents concerning this issue, which we cannot account for at this time, given the structure of these data collection efforts. We can speculate that the reporting by persons who had or believed they had the responsibility for enrolling children may have been skewed.

The only other study of this issue indicates that foster care children, law guardians and caseworkers may have a more accurate view regarding delays in school enrollment than parents and foster parents. This study, conducted for ACS earlier this year, also found that delay in school placement is a serious problem.[86] The study, which preliminarily measured certain areas of academic performance of a randomly drawn sample of 500 foster children who entered the New York City child welfare system during a four-year time span beginning in 1997, stated that ACS enrolled nearly 80 % of those sampled foster children who were not enrolled in public school at the time that they

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[86] Examining the Educational Performance of Children in Foster Care, *supra*, note 5, at 8. These findings are also supported by The Educational Needs of Children of Foster Care, *supra*, note 1. This section of the report was based on focus groups and did not include an analysis of data.

entered foster care.[87] Stunningly, the study found that the average length of time necessary to enroll these students was five months.[88] This is more than four times the delay expressed by the foster children who responded to our survey.

(2) Continuity of Educational Services

THE PROBLEM: Based on experience in the field and conversations with other advocates it is believed that because of their entry and continued stay in foster care there is a lack of educational continuity for foster children. The many children in foster care who experience multiple moves between placements also experience moves between schools.

> **"[m]y other problem was not being able to concentrate in school. I couldn't stop thinking about the problems I had in foster care. I couldn't stop worrying about what was gonna happen to me in the future after leaving foster care, whether I would be dead or alive by the age of 20, or make it to see tomorrow." Angi, *How I Graduated*, Foster Care Youth United, pp. 16-17 (May/June 1996).**

Survey Results: Continuity of Educational Services

Survey questions were also created to determine the frequency with which children changed schools while living in foster care. Those surveyed groups who responded to this inquiry were foster children including pregnant and parenting teens in foster care,

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[87] The report indicates that, of the remaining children who did not re-enroll, one-third were age sixteen or older. An inference was drawn that "maybe these teens did not want to return to school." The fact that seventeen is the cut-off age for compulsory attendance in New York City was not addressed.

[88] This average was based on the fact that while half of these children were reenrolled in school within two months of foster care placement, over one-quarter of the children did not return to school for 10 months or more. See Examining the Educational Performance of Children in Foster Care, *supra*, note 5, at 8.

foster parents, biological parents, law guardians, and the caseworkers/social worker group. Unfortunately our beliefs about educational continuity were confirmed by the survey results.

Over 75% of the foster children who responded stated that they did not remain in their original schools upon entering foster care. Furthermore, nearly 65% reported that they had been transferred from school in the middle of the academic year. Of this group, 70% said they had been transferred at least once during the school year, 22% indicated they were transferred twice within that period, and one youth reported to have been transferred more than five times in one academic year while living in foster care. Sadly, 57% of these children reported that no one explained to them the basis for the repeated transfers.[89]

"It's hard for group home kids to get an education when so many are bounced around from one facility to the next, one school to another. I know, because I've seen it happen many times with a lot of kids. They have trouble catching up or even learning the curriculum because they have to keep up with the new teachers' schedule no matter where they left off at their school. So they end up receiving bad grades."
Hazel Tesoro, *School Can Be Hell For System Kids*, Foster Care Youth United, p. 30 (May/June 1999).

[89] Thirty-five percent of the children did indicate that they were informed of the reasons for their transfers either by a caseworker, teacher, foster parent, or parent. Seven percent stated that the question was not applicable to them.

Moreover, despite the fact that absent a valid medical reason, a student cannot be asked to leave or be forced out of school because she is pregnant,[90] 22 % of the pregnant and parenting teens surveyed stated they had been forced to change schools as a result of their pregnancy. These young people not only faced transfers while in foster care, but also apparently received discriminatory treatment as a result of their pregnancies. Because most of the parenting teens surveyed indicated that they were voluntarily placed in foster care by their parents after giving birth, we believe that the actual breakdown for transfers among pregnant teens in foster care as a result of their pregnancies is even greater than that reflected in our results.

Consistent with the answers provided by foster children, nearly 70 % of all surveyed law guardians[91] and 75 % of the all respondent caseworkers and social workers[92] indicated that their clients had been transferred to more than one school within the same academic year. Unfortunately, each of these groups also confirmed that foster children did in fact change schools as much as five times in one academic year.[93] The primary reasons which law guardians, caseworkers and social workers attributed to

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[90] 20 U.S.C.§1681 (1972) ("Title IX"); 34 C.F.R. §106.40 (1993) (implementing regulations of Title IX); N.Y. Education Law §3201-a (McKinney's 1972) (providing that "no person shall be refused admission into or be excluded from any course of instruction in the state public and high school systems by reason of that person's sex").

[91] Forty-two percent of the law guardians who stated that their clients had experienced transfers reported that this was true for 0 to 25% of their clients; 20% reported that approximately 50% of their clients were transferred more than once in the same academic year; nearly 7% reported that that their clients fell within this category but could not approximate the number of such children; and 2% stated that this was true of 75% of their clients. The remaining 29% of law guardians selected "don't know" as their response.

[92] Sixty-four percent of the caseworkers who confirmed that their clients had experience school transfers more than once in a school reported that this was true for 0 to 25% of their clients; 23% indicated that approximately 50% of their clients fell within this category; 10% identified approximately 75% or more of their clients as such. The remaining caseworkers and social workers selected "none" as their response.

[93] Nearly 5% of the law guardians surveyed indicated this was true of 10% of their clients, and approximately 3% of the caseworkers and social workers reported the same for 10% of their clients.

frequent transfers of foster children were their short term foster home placements, behavioral problems in foster homes, and behavioral problems exhibited in school.[94]

In contrast, foster parents and biological parents indicated that their children in care experienced changes of school at a much lower rate. Twenty percent of the foster parents reported that the foster children they cared for were transferred to more than one school within the same academic year, and 38% of the biological parents indicated the same, still much higher than non foster care involved children.[95] Our findings once again demonstrate a departure in the answers provided by foster and biological parents, when compared to those of the remaining respondent groups on this issue.

As discussed above,[96] transfers between schools have been found to be a problem in New York City in other recent data reports. Moreover, in its own report on the educational performance of children in foster care, ACS data concluded that from a total of 398 foster children studied, 44 % experienced school disruptions. Of this group nearly 33% experienced a non-educational transfer while in foster care, meaning that ACS could find no explanation in the Board of Education's database for their transfers.[97]

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[94] Eighty-eight percent of the law guardians surveyed identified short term foster home placements as a cause for repeated school transfers; 84% reported behavioral problems in the foster home as such; and 73% attributed behavior problems in school as a key reason. Similarly, the caseworkers and social workers surveyed identified the primary reasons for frequent changes in schools in the following manner: short term foster home placements – 68%; behavioral problems in foster home – 65%; behavioral problems exhibited in school – 51%.

[95] The foster parents and biological parents who reported that their children experienced school changes attributed these transfers to the same factors identified by law guardians, caseworkers, and social workers: short term foster care placements, behavioral problems in the foster home and behavioral problems in school.

[96] See Chaifetz, *Listening to Foster Children*, supra, note 11, at 12. *See also* Mark Green, Justice Denied, *supra*, note 27, at ii.

[97] The children who experienced transfers while in foster care were grouped into the following three categories: (1) children who left the Board and had not returned when data was collected; (2) children who experienced an educational transfer (including placements into and out of special education or an alternative high school or graduation from a school); and (3) children with non-educational transfers. The

"It's hard to be making new friends, meeting new people, and getting used to each school's vibe. And it can be hard to concentrate when you jump from home to home and school to school. ... Sometimes teachers assume you're just passing through their school and class, and won't take an interest in you. And if an adult in school does take a special interest in you, you usually lose that connection when you switch schools."
Russell Morse, *School Daze*, Foster Care Youth United, p.9 (November/December 1999).

As previously discussed, studies clearly document that children suffer academic and behavioral difficulties when their school placements are disrupted. Despite the recognition for the need to promote educational permanency for foster kids and the commitment made by ACS in its 1996 Reform Plan to create neighborhood linkages,[98] our results confirm that foster children are still experiencing repeated school transfers and academic disruption.

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studied showed that 56% of the foster children studied did not change schools. Of the remaining foster children who did, 4% left the Board; 1% graduated; 1% moved out of special education; 0.3% moved out of an alternative high school; 3% moved into special education; 1% moved into alternative high schools. The two groups of greatest concern for ACS were those who left the NYC public school system and those who transferred to a new school for no educational reason. After comparing characteristics within each group, ACS researchers determined that "roughly 4 percent" of the sampled foster care students who left the public school system did so because they were "placed in congregate care facilities or enter[ed] the school system in the surrounding counties." Examining the Educational Performance of Children in Foster Care, *supra*, note 5, at 13-15.

"I couldn't live with the fact that I had to wake up every morning at four o'clock, and be on trains for about two hours, and then on a bus for a half hour more. And then I had to make the same trip home. Five hours of traveling to school each day is too much."
Terry Da Costa, *Placed Too Far From Home*, Foster Care Youth United, p. 26.

(3) Access to and Quality of Educational Services

Educational Success Indicators

THE PROBLEM: Experience in the field and conversations with other advocates indicated that children in foster care are suspended more frequently, have higher drop out and holdover rates and lower graduation rates than children who are not in care.

Survey Results: Educational Success Indicators

Survey questions were created to assess the educational outcomes and experiences of children in foster care. The survey asked about dropout rates, graduation rates, holdover rates, and suspension rates. Unfortunately, the results were quite dismal. Nearly 68 % of the law guardians and 56 % of the caseworkers indicated that they had clients who had dropped out of school. Forty-percent of the pregnant and parenting young

[98] *See* Protecting the Children of NewYork, A Plan of Action for the Administration of Children's Services, p. 36 (December 19, 1996).

women who were surveyed indicated that they did not stay in school during their pregnancy.[99]

Almost half (44%) of the foster care youth indicated that they had been heldover at least once in school. Of those who indicated they had been held over, 92% indicated that they were heldover once, and 8% indicated that they were held over twice. Twenty-two percent of the foster parents who responded to this question stated that approximately 25% of the children they cared for were held over while in foster care, while nearly the same number of biological parents (23%) indicated they had at least one child who had been held over while in foster care. Eighty percent of the law guardians and 63 % of the social workers and caseworkers confirmed that between 25% and 75 % of their clients had been held over while in foster care.[100] This is extremely disturbing because hold over is one of the strongest indicators for school drop out.[101]

Multiple school suspensions[102] were also identified as a common problem by youth, parents, and foster care workers. Some foster care youth indicated that they had

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[99] One young woman explained that she entered a GED program after being told by a maternity shelter caseworker that her "school was too far." Two young women indicated they left school because they "had to attend" the schools on site at their maternity shelters. One young woman indicated that she left her original school after entering a foster care Diagnostic Center.

[100] Of the law guardians surveyed, 36.1% indicated that approximately 25% of their clients were held back; 44% indicated that between 25 and 50% of their clients were held back; and 19% indicated that approximately 75% of their clients were in this category. Similarly, 42% of the caseworkers indicated that between 0 and 25% of their clients were heldover; nearly 37% indicated that approximately 50% of their clients were heldover; and 21% reported this to be true of 75% more of their clients.

[101] Jay P. Heubert and Robert M. Hauser, eds. High Stakes: Testing for Tracking, Promotion, and Graduation, National Academy Press, 1999.

[102] There are two types of suspensions in New York City: principals' suspensions, which last for 5 days or less, and Superintendents' suspensions, which last for 6 days to one year or expulsion. *See also* Chancellor's Regulations A-441 II.

been suspended between 2-5 times in a year.[103] Again, This finding is quite disturbing. Not only are suspensions the first step towards school failure and drop out, but continued use of multiple suspensions are illegal in New York City. Moreover, a suspension is not intended to be a punishment – it is a device by which principals and school officials can ensure the safety of a school building. Research has documented that foster children, particularly those who are victims of abuse or who have witnessed violence, often have behavioral difficulties. It is of great concern that education system is responding to these vulnerable children who are experiencing great personal trauma by excluding them from school.

In addition, in light of the high incidence of suspensions, which minority students face as a group within the New York City public school system, the high rate of suspension for foster care children may also be explained by the fact that they are overwhelmingly Black and Latino.[104] And while children receiving special education services are not to be suspended for behaviors related to their disability,[105] it appears that this mandate is not always followed with regard to children in foster care. For example, 83% of the law guardians surveyed and 78% of the caseworkers reported that suspension rates are higher for children in special education than for children in general education.

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[103] Specifically, 7% of the foster care youth surveyed indicated that they had been suspended more than five times in one year; and nearly 4% indicated they had been suspended more than twice in the same academic year.

[104] Accounting for only 36.6% of the Board of Education school register, African-American students account for 67% of all suspensions. The New York City school system student profile is 36.3% Black, 37.1% Hispanic, 16% White, and 10% other.

Access to Appropriate Special Education Services

THE PROBLEM: Our agency's experience has been that there is an overrepresentation of children in foster care who are receiving special education services.

Overview of Special Education Services

The Individuals with Disabilities Education Act (IDEA)[106] contains extensive substantive and procedural rights for disabled children. The IDEA was amended in 1997, strengthening entitlements and procedural due process protections. To ensure that parents would be able to obtain services for their disabled children in the face of uncooperative school districts, Congress granted parents and "persons in parental relation" the right to an elaborate system of procedural safeguards.[107]

Section 504 of the Rehabilitation Act of 1973 also outlines the right to proper services and accommodations which children with disabilities are required to receive in a school setting.[108] New York City has a long history of trouble in providing proper services for children with disabilities, including those in foster care.

New York City's record on delivery of special education services in integrated setting w non-disabled children is particularly abysmal. Nationally, approximately 80% of special education students remain in general education settings for the greater part of

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[105] *See* 20 U.S.C.A. 1415 (k)(5); Section 504 of the rehabilitation Act. *See also* Chancellor's Regulations A-440 and 441 I B.

[106] The IDEA was originally enacted in 1975 as the Education for All Disabled Children Act, Pub. L. No. 101-476, 104 Stat. 1103, amended by the IDEA Amendments of 1997, Pub. L. No. 105-17, (codified as amended at 20 U.S.C. §§1400-1487 (1997)), ("PL 105-17"), and its implementing regulations, 45 C.F.R. Part 300 (1999).

[107] 20 U.S.C. § 1415.

[108] 29 U.S.C.§794

the day, while in New York City the percentage is about 40%.[109] New York City has more students in special education than the national average, and a disproportionate member of these students are minority or of limited English proficiency or both. New York City decertifies only 2.4% of its special education students back into general education each year.

With the 1997 IDEA reauthorization Congress strengthened the requirements for delivery of special education services to children in the least restrictive environment where they will be educated with non-disabled peers to the maximum extent appropriate. However, the City is out of compliance with the requirements of the 1997 amendments.

In 1998, the Mayor's Task Force on Special Education issued a report in which it emphasized the level of dysfunction within the special education system in New York City, calling it "a warehousing system populated by tens of thousands of students who do not have a disability."[110] The Action Plan strongly supported reform of the special education system as a whole.

Moreover, there is systemic segregation of Black and Latino students. Three years ago, the federal Department of Education's Office of Civil Rights (OCR) found not only that does New York City place too many students in segregated special education classrooms, but also that it disproportionately classifies Black and Latino students as "learning disabled" or "emotionally disturbed." The City signed a Memorandum of Understanding, which is still in effect, promising to take substantial steps to rectify this inequity by the year 2000.

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[109] Focus on Learning, NYU Institute for Education and Social Policy, p.17 (October 1995).

[110] Mayor's Task Force On Special Education, An Action Plan, p.1 (April 1998).

The exit data for children in special education are particularly grim, reflecting what can only be described as a systemic and ongoing failure of the Board to provide appropriate special education programs and services to all children receiving special education services in New York City. Historically, the promotion rates for children with disabilities in segregated settings are dismally low, compared with children with disabilities in integrated settings, those who are only receiving related services and general education students.[111] Promotion rates for students in integrated settings are substantially higher than those promotion rates for children in segregated settings. An examination of the promotion statistics in conjunction with the Citywide Exit Data leads to a general picture of failure.[112]

The Board has recently passed a new continuum of services for students with disabilities that emphasizes placement in the least restrictive environment (LRE), designed to eliminate the warehousing and segregation of students in separate, substandard classes.[113] Advocacy groups and educators will be carefully monitoring this

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[111] In 1998, for example, 57,418 out of 89,621 children with disabilities (37.5 %) who were in segregated and inclusive programs were held over. In comparison, 32,086 out of 608,211 children (5.3%) in general education were held over that year.

[112] For example, in 1998, out of all of the 11,263 children receiving special education services who exited the special education system 3,920 dropped out. Only 25 received Regents diplomas; 1,467 received RCT diplomas; and 1,253 received IEP diplomas. Out of the 8,011 children with learning disabilities exiting the system in 1998, 8 received regent's diplomas, 1,231 received local diplomas, and 103 received GEDs, 980 received local diplomas and 2,835 dropped out. The Board also reported 1,802 as "moved and known to be continuing." Out of 2,180 emotionally disturbed children, 884 dropped out, 1 received a regent's diploma, 101 received local diplomas, 55 got GEDs, and only 89 received IEP diplomas. 895 had "moved." The statistics for the students with mental retardation are even bleaker for that year. Out of 347 who exited, 87 dropped out, 88 received IEP diplomas, and 3 received local diplomas.

[113] Special Education Services as Part of a Unified Service Delivery System, the Board of Education (June 2000).

new system of services delivery; whether it will change the face of special education services in the City is a question that can only be answered with time.

Survey results: Access to Appropriate Special Education and Services

As previously discussed, foster children are in many instances low academic performers as a result of developmental, cognitive, behavioral and emotional problems caused, in part by, abuse, neglect, and parental drug use during pregnancy, family disruptions, and transience. Despite the special academic needs commonly exhibited by children in the foster care system, currently no legal mandate exists requiring the tracking or monitoring of special education services to children in the New York City foster care system.

Overall, 30 % of the foster care youth surveyed reported receiving special education services; 56 % of these young people began receiving special education services after entering foster care. Similarly, 84 % of biological parents indicated that their children were not receiving special education services prior to being placed in foster care, but were placed in special education settings while they were in care. Fifty-four percent of foster parents indicated that some of the children who had been placed in their care were subsequently referred for special education services. The high volume of foster children receiving special education services upon foster care entry is also highlighted in ACS' recent report. This report found that 21% of the children who were enrolled in school upon foster care placement were enrolled in segregated special education classes. The children were enrolled in either modified instructional settings (MIS)[114] or

[114] These are segregated special education programs that a child is in for 60% or more of his or her day and is run by each of the 32 school districts.

specialized instructional environment (SIE)[115] classes.[116] The report further noted that this rate of children in segregated settings was nearly three times that of all children in New York City.

The placement rate from this data is alarming. Whether these children are in need of these services or are inappropriately being classified as in need of these services requires a more thorough review.[117]

Our survey results also indicate that for those children receiving special education services, in segregated or non-segregated environments, further investigation is necessary to determine whether Individual Education Plans (IEPs) are being properly developed and implemented as required by law. Additionally this high placement rate in segregated environments needs investigation to determine whether these children are being inappropriately placed into highly restrictive educational settings upon entry into foster care.[118]

Receipt of Services and Involvement in the Special Education Process

Survey Results

The IDEA requires parental involvement at all stages of the special education identification, evaluation, and placement processes. However, less than 6% of the

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[115] These are segregated special education programs that a child is in for 60% or more of his or her day and run by District 75, whose mission is educate some of the most severely disabled children in New York City.

[116] Examining the Educational Performance of Children in Foster Care, supra, note 5, at 10.

[117] Although there appears to be a disproportionate number of foster children in New York City currently placed in special education programs, some child welfare professionals expressed concern for the number of eligible foster children who are not being identified and referred to the Committee on Preschool Special Education (CPSE) and the Committee on Special Education (CSE) for evaluations and delivery of appropriate special education services.

biological parents who had a child placed in special education while in foster care had participated in the special education and identification process. Nearly 90% indicated that they participated in none of the processes associated with special education (referral, evaluation or placement). Foster parents also reported a low involvement rate of biological parents in the special education process. These findings are in keeping with what we have found from our experience– that biological parents, who are in most cases the only person with authority under federal and state law to authorize the Board to provide special education services to their children – are often illegally excluded from the process.[119]

Although agency caseworkers and social workers have primary responsibility to ensure the welfare of all children in the foster care system, 35% indicated that they are routinely not involved with the identification, referral, and special education process, and only 38% indicated that they were aware of existing laws and regulations which govern the process. The findings for law guardians were more promising. Overall, 79 % indicated that they routinely get involved with the special education process. Slightly more than half (57%) indicated that they were aware of existing special education laws

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[118] See allegations put forth by plaintiffs in Marisol v. Giuliani, *supra*, note 41, that children in foster care were being put into special education as a result of their foster care status, not as a result of disabilities.

[119] *See* The Educational Needs of Children in Foster Care, *supra*, note 3, at 9. Similar findings of a general lack of involvement by parents were made in a 1998 study, written by The Door – A Center of Alternatives, describing the poor level of parental awareness and participation in foster care Service Plan Review (SPR) meetings, and in the drafting of Uniform Case Records (UCR). "The SPR/UCR procedures are an essential tool for determining which permanency path should be pursued for a given child in foster care, and then for defining the manner in which to achieve that goal. It is through this process that 1) a child's 'permanency plan goal' (PPG) – is developed; 2) requirements for parents to have their children returned are determined, and 3) all services to be provided to children and their families are delineated, subject to any court orders providing otherwise." *See* The New York City Foster Care System in Crisis: The Continued Failure to Plan for Children, A Report of the Committee to Involve Clients in the SPR/UCR Process, p.3 (February 1998). The author notes, "[s]omething is very wrong with a system that makes compliance with a document indispensable to the achievement of a goal, and then fails to make the document available to those who must comply with it." p. 12.

and regulations, but only 14 % could articulate a general understanding of the legal rights of children receiving special education services.[120] The need to ensure that all adults involved in the lives of children in foster care are aware of the many services available to meet each child's specific needs is apparent.

More than half (52%) of the caseworkers surveyed indicated that their clients did not receive appropriate special education services "very often" while in foster care. However, law guardians were divided on this issue with nearly 32% indicating that their clients did not receive appropriate services very often while in special education, and 37% stating their clients "often" did.

Staff members from various district offices of the Committee on Special Education (CSE) were also questioned about the delivery of special education services to children living in foster care. Despite the fact that CSE offices have the primary responsibility for ensuring that all students with disabilities receive appropriate educational services in the least restrictive environment, 95% percent of staff surveyed indicated that they had no tracking mechanism for identifying the quantity and quality of special education services offered specifically to foster children attending New York City public schools. This lack of information is critical because the CSE staff need to obtain consent from the biological parent in most cases to go forward with an evaluation.[121] Unfortunately, further conclusive data could not be obtained from this respondent group.

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[120] Although law guardians' general awareness and understanding of special education appears limited, those law guardians surveyed at the Legal Aid Society emphasize the fact that in each of the five boroughs there is a supervising social worker who serves as an education specialist, to whom all clients with special educational needs are referred.

Enrichment Educational Services and Alternative Education Options

THE PROBLEM: Based on our experience in the field and conversations with other advocates we found that young people in foster care are not provided sufficient transitional planning services to enable them to live independently after they leave care.

Survey Results: Enrichment Educational Services and Alternative Education Options

Law guardians and caseworkers indicated that they routinely discuss a range of educational services, such as Vocational and GED Programs with their clients. Ninety-one percent of the law guardians and 84 % of the caseworkers indicated that they have such discussions with their clients.

However, when it came to actual receipt of services, the survey results were more disturbing. Youth in foster care need assistance with the transition from school-to-work, but 32 % of the youth surveyed indicated that they had not discussed college and/or job skills with an adult while in foster care. Only one-third (36%) indicated that they had participated in any type of job-training program. On a brighter note, more than half (58%) of the foster care youth surveyed indicated that they were offered tutoring services while they were in foster care. However, over half (52%) of the foster care youth who responded when asked if they felt prepared to support themselves after they left foster said they did not feel prepared.[122] Over 50% of young people were unsatisfied with the quality of their education received while in care.

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[121] Staff from the Legal Aid Society has indicated that the school system's lack of understanding about consent is as a major problem in trying to secure appropriate special education services for their clients.

[122] Similar findings come from a recently published law review article: "When asked if they had ever asked for tutoring or special educational help while in foster care over 44% said they had. A little over 42% said that they did not receive such help. Seventeen percent said no one had ever talked about college with them, and of those who had received information nearly 40% had not received information on financial aid opportunities, a necessity for almost every child in foster care who will go to college. Over 46% said they had no opportunities for participating in job training programs. This lack of services was summed up when

IV. Recommendations

As evidenced by the findings recorded in this report, the mechanisms by which New York City foster children access educational services must undergo comprehensive change. Our survey results reveal that although many legal mandates exist, affording educational rights to all students, many of these are disregarded and not applied to the most vulnerable population in New York City public schools – foster children. The following section provides some concrete strategies for addressing the systemic problems that impede foster children from receiving a quality education.

Meet the Requirements of Federal, State, and Local Law

- **State law clearly outlining the state's obligation to assure proper educational services to foster care youth should be passed**

Our survey has clearly documented the many ways in which children in foster care do not receive appropriate educational services: toddlers are not enrolled in preschool programs, children are not enrolled in school for months or are bounced from school to school without regard to what this will do to them academically, let alone emotionally. State law has only stated the broadest of parameters for educational service delivery. A new law should passed that will set out specific guidelines for providing educational services to children in foster care, setting out an explicit mandate for the interagency coordination, data collection, tracking and promulgation of policies to facilitate implementation of all other existing laws.

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respondents were asked if they felt prepared to support themselves after they leave care. Over 52% stated they were not prepared" Chaifetz, *Listening to Foster Care Children*, *supra*, note 11, at 20.

- **NYSED should take responsibility for enforcing federal and state law**

The New York State Education Department (NYSED) has the ultimate responsibility under federal law to ensure that the Board of Education and other public agencies are delivering free appropriate public education to all children with disabilities. Part of this responsibility includes the promulgation of policies and procedures to ensure that requirements of federal and state law are followed, and development of interagency agreements with other public agencies responsible for the care of children. The IDEA imposes on NYSED the obligation to develop policies to ensure that transient children are provided appropriate educational services. NYSED should develop new policies and procedures designed to improve the delivery of special education services to children in foster care and provide oversight to and monitor compliance by the Board of Education on existing policies.

- **The New York City Board of Education must take responsibility for providing baseline educational requirements for children in foster care**

The Board should ensure that school principals, guidance staff, teachers and staff of the Committees on Special Education and School-Based Support Teams are aware of and enforce the federal, state and local laws that govern the delivery of educational services to children, such as the requirements for parental consent and involvement in the development of special education placements, rules about enrolling children in foster care in schools, and prohibitions against involuntary transfers of students.

- **The Administration for Children's Services (ACS) should take responsibility for training their staff about relevant laws and enforcing accountability for following laws**

ACS, in assuming custody and care of vulnerable children, must take responsibility for the educational welfare of those children. ACS must not only be accountable for guaranteeing that the children receive the educational services to which they are entitled, but also to provide a level of care that does not exacerbate educational problems. In general, ACS staff should be aware of relevant laws and follow them, to prevent children from being illegally excluded from school or denied services.

- **A task force should be created to address the systemic problems and craft solutions requiring multidisciplinary coordination**

A task force on foster care and educational services should be developed which will meet regularly to tackle these complex issues. By bringing the stakeholders together, collaborative relationships would foster that might create innovative solutions to some of the problems caused by the difficulties in working with two large government agencies with decentralized operating units

Secure Appropriate Enrollment in Educational Programs

(1) The Administration for Children's Services (ACS) and the New York City Early Intervention Program must implement strategies for effective coordination and collaboration between caseworkers and EI service providers to ensure the timely enrollment of eligible toddlers in foster care into the EI program.

Tracking

A mechanism must be established within ACS and the EI program to track the number of children in foster care who are identified, referred and receiving EI services. The limited information currently available points to a possible underutilization of the program. Without tracking information, it is impossible to assess the extent of

identification and service delivery to eligible infants and toddlers who are in foster care. Receiving appropriate EI services will ensure that these children meet with future academic and social success.[123]

Training

To ensure the timely enrollment of infants and toddlers into the Early Intervention Program, caseworkers, social workers and foster parents should receive annual mandatory training about the program, the laws which govern it, and the criteria for identifying eligible toddlers. Biological parents should at a minimum receive information about the EI program. This would ensure that those adults primarily responsible for the safety and welfare of foster children are aware of and know how to access this vital program.

Implementation

ACS must hold caseworkers accountable for ensuring that eligible foster children receive necessary EI services to which they are entitled.

The time period for receiving these services is very short, but the positive effects of EI can be enormous. Although EI staff, law guardians, and the caseworker/social worker subgroups surveyed all identified the latter group as the largest primary referral source of foster children to the EI program, some EI service providers articulated a concern that once caseworkers identify and refer children to the program, they frequently

[123] It is AFC's understanding that after extended advocacy city officials are working with State officials to revise the current data system, Kids Integrated Data System (KIDS), used by the EI program, to include fields which monitor the quality and quantity of EI services provided to foster children. The New York City EI program is planning to voluntarily change a locally defined field, currently used to record EI Regional Directors names, to indicate "Yes" if a child in foster care is referred to the EI program, to help begin tracking children in foster care. When this program will be implemented is unknown. Additionally this "patch", if implemented, will only apply to NYC, and will leave the rest of the state without any foster care tracking ability.

delay in providing the statutorily required documentation to complete the process. This includes providing parental consent forms and medical information.[124] Such a lack of information results in children experiencing delays in obtaining EI services, or children in foster care fail to receive services because they age out of the EI program prior to the completion of the referral process.

A policy and procedure must be established clearly outlining the caseworker's responsibility for making referral and providing necessary documentation.

(2) ACS must create a policy directive stating that all four and five year olds in foster care are enrolled in school programs.

Caseworkers must be told that absent extraordinary circumstances all preschool age children on their caseload should be enrolled in either pre-kindergarten or kindergarten. Proper oversight of caseworker caseloads by supervisors in the area of school enrollment is necessary to ensure that enrollment occurs. Study after study has borne out the advantages of early childhood education especially for children coming from disadvantaged backgrounds. Foster children could especially benefit from early childhood education programs. There is absolutely no reason why the overwhelming majority of four and five year olds in foster care are not in public school programs.

All foster parents should be supervised by their agencies to make sure that they enroll all eligible children, ages four and/or five, into a pre-kindergarten, or kindergarten program upon the child reaching the appropriate age.

(3) The Board should enter into an agreement with ACS to give preference to children in foster care in enrolling them in pre-kindergarten classrooms.

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[124] Interview with Gilbert Pagan, Director at Theracare, one of the largest agencies providing EI services in New York City.

No child in New York City can be denied enrollment in Kindergarten. If there is no room in a class in a child's zoned school, the child must be allowed to enroll and provided transportation to another school. However, the Pre-Kindergarten program, which should become universal in the academic year of 2002-3, has a limited number of openings. Until the program is universal, poor children are given first preference for receiving pre-kindergarten placements. ACS and the Board should enter into an agreement that gives first preference within the impoverished category to children who are in foster care, thus assuring them seats.

(4) Existing laws prohibiting delays in school placement of foster children, due to missing academic and immunization records must be enforced. ACS caseworkers and Board staff who fail to comply with these mandates must be held accountable.

In 1993, the New York City Board of Education issued regulations to ensure and facilitate the timely enrollment of children in foster care into their appropriate school settings.[125] These regulations direct principals to admit children in foster care even though they do not have the school records and to allow them to attend classes while the records are located.[126] Despite the issuance of these regulations, our survey results indicate that foster children continue to be denied immediate school admission, and experience loss of valuable academic instruction when unable to furnish such records at the time of initial registration. Our surveys indicate that many caseworkers are unaware of these regulations.

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[125] *See* Chancellor's Regulations A- 160 and 162.

[126] *See* Chancellor's Regulation A-162(4). The regulation provided, in pertinent part, that even if "a parent/guardian or agency social worker brings a student to school without [appropriate] documents…the principal will admit the student and conduct an investigation to determine the student's previous school and status. The student shall attend class during this investigation."

Caseworkers must all be trained about this critical Board regulation, and rely on its authority if challenged by school officials upon enrolling foster children whose records are not then accessible. Casework supervisors must hold caseworker's accountable to assure educational continuity for the children in care. The current attitude appears to set no priority for assuring that foster children are actually enrolled in a school program.

The Board should enforce its own regulations to prevent children from being illegally excluded from school when they are presented for enrollment by foster parents or foster care agencies.

Foster care parents must also be trained about the rights of the children whom they have in their care. As daily caretakers foster parents often enroll foster children in school upon their arrival to their homes.

ACS and the Board need to work together to provide essential information regarding the enrollment process. Each caseworker should be provided with a list of Board contacts, who are instrumental to the admissions process in their servicing school districts, and a list of advocacy organizations to assist them if they run into trouble. Establishing a "foster care liaison" at the Board to assist foster care caseworkers would greatly assist these workers in assuring that children in foster care are enrolled.

(5) Remove the major barriers to timely school enrollment and receipt of services.

These barriers are missing school records, insufficient caseworker communication and lack of knowledge about education issues. This can be done with comprehensive caseworker training and developing a coordination and communication plan between foster care agencies and schools

(6) ACS must draft a directive that instructs caseworkers to make diligent efforts to keep foster kids enrolled in an educational program at all times.

As previously discussed, all children between the ages of 6 and 17 must attend school in New York City.[127] Furthermore, every person in parental relation to such a minor is required to ensure that the child attends school.[128] The problem appears to lie in enrolling children in the early years and in reenrolling teenagers. ACS's own sampling indicated that nearly a third of children not in school while in care were 16 or over. This is clearly unacceptable. Young people in care must be in school if they are likely to have a successful educational experience. It appears that the least priority is given to those children who need these educational services and will be shortly leaving the foster care system.

Although all foster care youth of compulsory school age who were surveyed were attending school at the time of this study, our survey results indicated that many pregnant teens in foster care did not remain in school upon becoming pregnant. This finding is disturbing; without a proper education, these young people more are most at risk for losing custody of their own infants or joining the welfare roles. As ACS has the legal responsibility for care and custody of all children in foster care, caseworkers must ensure that all children in foster care, including young pregnant and parenting teens, remain in school.

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[127] N.Y. Ed. Law §3205(3). *See also* CR A-210 (1) (1.1).

[128] N.Y. Ed. Law §3212.1.

Achieve Continuity of Educational Services

(1) Minimize the disruption of academic instruction by keeping children in their original schools upon entering foster care.

ACS must comply with its own goal set forth in its 1996 Reform Plan, of establishing neighborhood linkages "which keep removed children in contact with their own schools, friends, relatives, and neighbors."[129] Our surveys and ACS's own data indicate that children in foster care are still routinely bounced from home to home. As indicated by our surveys, and the current literature available in this area, change in foster home placements usually results in an automatic change in school placement.

Listen to older children about their educational needs

Children in foster care twelve and over who can travel to school alone should be heard, and afforded the option to choose to be transferred to a school which is in close proximity to their foster home placement, or remain in their original school so as not to disrupt the child's curriculum, or sever any relationships s/he may have developed with peers and/or teachers therein.

Pregnant and parenting teens in foster care should be given the same option, and not be forced to attend schools on-site at their maternity residence, as appears to be occurring according to our surveys and in violation of law.

For both these subgroups this can be accomplished at a Service Plan Review, or just through speaking to the young person about her wants and needs in an informal context.

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[129] See Protecting the Children of New York, A Plan of Action for the Administration for Children's Services, supra, note 98, at 36.

Improve Education Outcomes for Youth in Foster Care

(1) ACS must provide caseworkers and supervisors with knowledge of the law and of the procedures available to access educational support services for children and hold staff accountable for making diligent efforts to ensure that their clients meet with academic success.

Minimizing Multiple Suspensions

As indicated by our surveys, multiple and often illegal school suspensions appear to be yet another academic barrier for children living in foster care. Although an effort must be made to address the underlying issues and behaviors which may result in the suspension of many foster children, ACS caseworkers must be trained on the procedures available to protect the rights of all students who are suspended, irrespective of whether the suspension is legal or not. An ACS directive must be created that clearly sets forth the procedural protections for suspended students pursuant to New York State and City regulations.[130] Caseworkers should be directed to contact the child's law guardian upon notice of suspension to ask them to represent these children at any proceedings. Caseworkers must be equipped with the necessary tools to challenge suspensions, or at least reach out to advocacy organizations that can assist them at the first instance.

Enrichment Educational Services and Alternative Education Options

Caseworkers and foster parents must be trained about all educational entitlements available to the children they serve. An ACS policy must be created to instruct caseworkers, who are informed that a child is not performing at an age appropriate level,

[130] New York State Law and local regulations contain numerous procedural protections for suspended students, including notice of the charges, a required school investigation, a formal hearing, notice of disposition within two days, a written decision, and an appeal process. *See* N.Y. Ed. Law §3214. and Chancellor's Regulation A-440, 441, and 445 in pertinent parts.

to make all appropriate referrals necessary to meet the child's academic needs. These services should include, but not be limited to, academic intervention services, counseling, and after school programs. Caseworkers should be provided with a list of educational support services, and specific locations so that appropriate referrals could be made accordingly.

Caseworkers must be regularly informed about the many specialized educational programs available to their clients outside of their neighborhood zone schools. These programs include alternative schools, gifted and talented schools, magnet schools, vocational schools and GED programs. An ACS directive must be drafted advising caseworkers about these programs, including a list of contact persons therein to discuss the enrollment process and specialized curricula offered in each school. The ACS policy would help caseworkers identify the academic program best designed to meet every foster child's individual needs and interests.

Creating Comprehensive Transition Services For Children In Foster Care With The Transition From School To Work

Permanency planning for the child is required at regularly scheduled "Service Plan Reviews" (SPR). At an SPR the young person's services and permanency goals are determined and written up into the young person's "Uniform Case Record" (UCR). New York State Regulation requires that young people in foster care ten years or older must be involved in the development and review of their service plans.[131] Services outlined include such issues as counseling, education and medical assistance, and independent

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[131] N.Y Comp. Codes R. & Regs. Tit. 18 430.12©(2)(i)(a)(1) (1998).

living assistance.[132] It is at these SPR meetings as memorialized in the young person's UCR that transition services for older adolescents should be outlined. Once outlined, the law requires they be carried out. This can include vocational training, college planning, financial planning, etc. The SPR and UCR are potentially powerful tools but do not appear to be used in day-to-day planning for adolescents. Caseworkers need to be trained in the use of the SPR and UCR and know of the range of educational and transitional services actually available to children transitioning from school to work.

For those children receiving special education services their Individual Education Programs (IEPs) must detail the types of transition services that this child will receive to assist them in being self sufficient and hopefully entering the work world. IEP teams must be held responsible for assuring that these transition services are detailed and that the service plan is then implemented. Again the IEP has great potential power in this area, but in practice in New York City advocates have found very few transitional services given to young people.

(2) ACS and the Board of Education must track the number of foster children identified, referred and placed in special education settings in order to determine appropriateness of services received.

Tracking of Special Education Services to foster children is vital

Despite the fact that the CSEs are responsible for the evaluation and placement of children who need special education services, almost every surveyed official indicated that they had no knowledge about the quality or quantity of services offered to disabled students in foster care. Since there are so many unique issues facing children in care, the CSEs should develop special screening procedures for special education evaluations and

[132] N.Y Comp. Codes R. & Regs. Tit. 18 430.12 (1998).

reviews to identify children in care. These procedures should include requirements for the CSEs to communicate with the legally appropriate person with authority to make decisions about special education services, to comply with the CSE's obligations to provide services for eligible children.

The Board and ACS have signed a Memorandum of Understanding (MOU), agreeing to share data to assess the academic performance of foster children in New York City public schools it is as yet not completed. A mechanism must be created, within the data system, to specifically monitor the number of foster children who are identified, referred and receiving special education services, as well as the restrictiveness of the placement. It is only through such a device that it can be determined whether eligible children in foster care are being identified and referred to the Committee on Special Education (CSE), and receiving appropriate services in the least restrictive educational setting.

A Review of a Random Sampling of disabled foster children's educational records should be undertaken immediately

It appears that the rate of special education referral and placement is far higher than that of the general population. This may be warranted; these children may be exhibiting disabilities as a result of their abuse or neglect. However, no one currently knows if this is the case as there has not been any kind of review to determine the appropriateness of both the special education referral, and the restrictiveness of the placement. Although not determined conclusively from our study a common concern voiced by the various respondent groups surveyed was that some foster children who are eligible for special education services are not identified or referred to the CSE but that an

even greater number of children in care are often placed into highly restrictive settings without prior investigation of the many alternatives to special education available to meet their needs. The best resource to undertake such a study should be a research institution with a strong understanding of the delivery of special education services in New York City. It is only after such a review has been done that the Board and ACS will have any idea if children in foster care are being placed as a result of their foster care placement and not a disability, or if disabled are being placed in a more restrictive environment than warranted

ACS should implement a policy for its staff to understand the special education system and alternative services

A clear policy is needed for caseworkers, foster and biological parents, that prior to considering special education for a student, the Board is required to explore alternatives, such as: conferencing with parents, academic intervention services, implementing a behavior management plan, and Section 504 accommodations as well as other non-special education services.

Parental Involvement in the Special Education Process

Parental (both biological and foster) involvement is key to ensuring that children receive appropriate special education services. Our surveys indicate that the involvement of parents in this process is extremely low. Parents must consent to an evaluation, participate in the Individualized Education Plan (IEP) development, have input regarding school placement decisions, and ensure that the child is receiving all of the services to which s/he is entitled. Although children in foster care often have birth parents who are not regularly involved in their lives, in other instances, biological parents are available,

but caseworkers fail to notify and involve them in the educational decision-making process while their children are in foster care. Not only is this illegal under the IDEA, but it is contrary to the goal of permanency planning for a child. To ensure that all eligible children are properly identified and referred to the CSE, caseworkers, social workers, biological parents, and foster parents should receive mandatory annual training on special education services, and the criteria for determining eligibility. Such regular and comprehensive training would ensure that all adults responsible for foster children would be informed on how to access such services.

The Board and ACS Should Develop a Comprehensive Policy for the Appointment of Surrogate Parents

For those instances in which biological parents cannot be located despite diligent efforts, ACS and the Board must also implement a joint policy, which explains the process for appointing Surrogate Parents, and details the proper procedure to be followed by ACS staff when determining whether a Surrogate Parent must be assigned to a foster child. This policy must ensure that the Board comport with all relevant federal and state laws and regulations.

The Board Should Develop Screening Procedures and Services for Children in Foster Care Referred for Special Education

Many children are placed in foster care due to physical or sexual abuse, exposure to family violence and other forms of trauma. It is well documented that children who are victimized may exhibit behavioral difficulties and emotional problems and to recognize signs of trauma due to entrance into or circumstances around foster care placement. The Board should develop programs to identify needs of these children,

particularly services designed to avoid referrals to special education, train special education evaluators and counselors who provide services to students in special education on the impact of victimization and post-traumatic stress and develop counseling and behavioral interventions to meet these needs.